TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1949

No. 54

THE UNITED STATES OF AMERICA, EX REL. ELLEN KNAUFF, PETITIONER,

vs.

EDWARD J. SHAUGHNESSY, ACTING DIRECTOR OF IMMIGRATION AND NATURALIZATION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 18, 1949.

CERTIORARI GRANTED MAY 2, 1949.

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* Admitted into evidence at page 12 hereof.

United States Court of Appeals

For the Second Circuit

UNITED STATES OF AMERICA, *ex rel.*, ELLEN KNAUFF,

Relator-Appellant,

against

W. FRANK WATKINS, District Director of Immigration and Naturalization Service,

Respondent-Appellee.

Statement Under Rule 15

This is an appeal from an order of the Honorable Murray Hulbert, United States District Judge, entered on January 3, 1949. No hearing was held on said writ except that during the argument thereof held on November 16, 1948, Judge Hulbert permitted documentary evidence to be offered. This appeal from the aforesaid order was taken on January 4, 1949.

There was no change of parties or attorneys.

4

Writ of Habeas Corpus

UNITED STATES OF AMERICA,
SOUTHERN DISTRICT OF NEW YORK, } ss.:

Civ. 47-585

To: *W. Frank Watkins, District Director of Immigration and Naturalization for the District of New York and/or whomsoever may have the custody of the body of Ellen Knauff.*

YOU ARE HEREBY COMMANDED that you have the body of
5 Ellen Knauff, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, before one of the Judges of the United States District Court within and for the District aforesaid on the 13th day of October 1948 at 10:30 o'clock in the for noon of that day, in the United States Court House, Room 506, in the Borough of Manhattan, City of New York, to do and receive all and singular those things which the said Judge shall then and there consider of you in this behalf, and have you then and there this Writ.

WITNESS, the HONORABLE JOHN C. KNOX, Judge of this
6 Court, at New York, N. Y., in the said District, this 9 day of October, 1948.

WILLIAM V. CONNELL,
Clerk.

WRIT ALLOWED Oct. 9, 1948.

VINCENT L. LEIBELL,
U. S. D. J.

7

Petition of Kurt W. Knauff

UNITED STATES DISTRICT COURT,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE]

The petition of KURT W. KNAUFF, respectfully shows this Court:

8

1. I am the husband of Ellen Knauff who is at present at Ellis Island, detained by respondent, and I make this petition for the purpose of inducing this Court to issue a Writ of Habeas Corpus in behalf of my said wife.

2. I am a citizen of the United States by naturalization, having been naturalized on April 23, 1943 in the United States District Court of the Eastern District of South Carolina, number of citizenship papers: 5488116.

3. During the World War, I was a soldier in the Armed Forces of the United States from November 21, 1942 to January 17, 1946, at which time I received an honorable discharge at the Fort Dix, New Jersey separation center. A photostatic copy of my discharge papers is annexed hereto and made a part hereof, and marked "Exhibit 1". 9

4. On February 28, 1948, I married my above named wife, Ellen Knauff, whose maiden name was Ellen Raphael, at Frankfurt, Germany. Said marriage was consummated with the permission of the Office of the Advocate General.

5. At the time of my marriage, my said wife was an employee of the Signal Division of the United States Army in Germany.

10 *Petition of Kurt W. Knauff*

6. My said wife proceeded to the United States where she arrived on August 14, 1948. Since said day she has been detained by the Immigration and Naturalization Service at Ellis Island, New York, subject to admission proceedings, and I have just been notified by the Office of the Commissioner of Immigration and Naturalization that she has been excluded from the United States for security reasons, and that her appeal from an exclusion order of the Board of Special Inquiry has been denied.

11 7. The exclusion of my said wife is arbitrary and illegal, in that she has been at all times loyal to the United States, and that she has a right to admission to the United States under Public Law 271 of December 28, 1945.

8. My said wife is not being held for the commission of any crime, or for any other reason except as aforesaid.

No previous application has been made for the relief herein demanded.

WHEREFORE, it is respectfully prayed that this Court issue a Writ of Habeas Corpus to inquire into the legality
12 of my wife's detention, and to determine the justification thereof.

KURT W. KNAUFF.

(Verified by Gunther Jacobson, October 8, 1948.)

Exhibit I, Annexed to Petition

COPY OF HONORABLE DISCHARGE FROM U. S. ARMY

(See opposite page ☛)

Exhibit I, Annexed to Petition

Army of the United States

Honorable Discharge

This is to certify that

KURT W KNAUFF ~~32~~ 639 552 TECHNICIAN FOURTH GRADE

HQ BATTERY 100TH DIVISION

Army of the United States

is hereby Honorably Discharged from the military service of the United States of America.

This certificate is awarded as a testimonial of Honest and Faithful Service to this country.

Given at SEPARATION CENTER
FORT DIX, NEW JERSEY

Date 17 JANUARY 1946

1946

J. H. Gunter

J.H.GUNTER
MAJOR INFANTRY

4317

1/1

ENLISTED RECORD AND REPORT OF SEPARATION

HONORABLE DISCHARGE

1. LAST NAME - FIRST NAME - MIDDLE INITIAL	2. ARMY SERIAL NO.	3. GRADE	4. ARM OR SERVICE	5. COMPONENT
KNAUF, KURT W	32 639 552	TEC 4	FA	AUS

6. ORGANIZATION	7. DATE OF SEPARATION	8. PLACE OF SEPARATION
HQ BTRY 100TH DIVISION	17 JAN 1946	SEP CTR FT DIX NJ

9. PERMANENT ADDRESS FOR MAILING PURPOSES	10. DATE OF BIRTH	11. PLACE OF BIRTH
114-20 133RD ST SO OZONE PK LI NY	1 DEC 1908	GERMANY

12. ADDRESS FROM WHICH EMPLOYMENT WILL BE SOUGHT	13. COLOR EYES	14. COLOR HAIR	15. HEIGHT	16. WEIGHT	17. NO. DEPEND
SEE 9	BLUE	BROWN	6-0	180 LBS.	0

18. RACE			19. MARITAL STATUS			20. U.S. CITIZEN		21. CIVILIAN OCCUPATION AND NO.
WHITE	NEGRO	OTHER (specify)	SINGLE	MARRIED	OTHER (specify)	YES	NO	
X			X			X		RADIO REPAIRMAN 5-83.411

MILITARY HISTORY

22. DATE OF INDUCTION	23. DATE OF ENLISTMENT	24. DATE OF ENTRY INTO ACTIVE SERVICE	25. PLACE OF ENTRY INTO SERVICE
21 NOV 42		28 NOV 42	NYC NY

SELECTIVE SERVICE DATA	26. REGISTERED YES	26. REGISTERED NO	27. LOCAL B.S. BOARD NO.	28. COUNTY AND STATE	29. HOME ADDRESS AT TIME OF ENTRY INTO SERVICE
	X		266	QUEENS CO NY	133-11 WEXFORD TERRACE HOLLIS N

30. MILITARY OCCUPATIONAL SPECIALTY AND NO.	31. MILITARY QUALIFICATION AND DATE (i.e., infantry, aviation and marksmanship badges, etc.)
RADIO OPERATOR 776	CARBINE SS 171 19 AUG 43

32. BATTLES AND CAMPAIGNS

CENTRAL EUROPE, RHINELAND
GO 33 WD 45 AS AMENDED

33. DECORATIONS AND CITATIONS

EUROPEAN-AFRICAN-MIDDLE EASTERN SERVICE MEDAL, GOOD CONDUCT MEDAL, WORLD WAR II VICTORY MEDAL, AMERICAN SERVICE MEDAL

34. WOUNDS RECEIVED IN ACTION

NONE

35. LATEST IMMUNIZATION DATES			
SMALLPOX	TYPHOID	TETANUS	OTHER (specify)
28AUG44	14AUG45	31AUG44	NONE

36. SERVICE OUTSIDE CONTINENTAL U.S. AND RETURN		
DATE OF DEPARTURE	DESTINATION	DATE OF ARRIVAL
6 OCT 44	E T O	20 OCT 44
31 DEC 45	U S A	10 JAN 46

37. TOTAL LENGTH OF SERVICE						38. HIGHEST GRADE HELD
CONTINENTAL SERVICE			FOREIGN SERVICE			
YEARS	MONTHS	DAYS	YEARS	MONTHS	DAYS	
1	11	14	1	2	5	TEC 4

39. PRIOR SERVICE

NONE

40. REASON AND AUTHORITY FOR SEPARATION CONVENTENCE OF THE GOVERNMENT AR 615-365 15 DEC 44 AND RR 1-1 (DEMOBILIZATION)

41. SERVICE SCHOOLS ATTENDED

42. EDUCATION (Years)		
Grammar	High School	College

16

Return to Writ of Habeas Corpus

UNITED STATES DISTRICT COURT,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

Civil 47-585

[SAME TITLE]

I, ALVIN LIEBERMAN, an attorney employed by the United
17 States Department of Justice, Immigration and Naturalization Service, hereby certify and make return to the writ of habeas corpus heretofore sued out by the relator herein as follows:

1. The relator, a 33 year old female, native of Germany, last a citizen of Czechoslovakia, presently stateless, arrived at the port of New York on August 14, 1948, ex USAT "Comfort", and applied for admission to the United States under the provisions of Public Law 271. On that day she was temporarily excluded from admission to the United States by an immigrant inspector under the provisions of
18 8 C. F. R. 175.57.

2. On October 6, 1948, the Assistant Commissioner of Immigration and Naturalization recommended that the relator's temporary exclusion be made permanent without the right of a hearing before a Board of Special Inquiry under the provisions of 8 C. F. R. 175.57. On the same day, this recommendation was adopted by the Attorney General, who ordered relator excluded from the United States.

3. Relator is presently detained at Ellis Island, New York Harbor, New York, under the aforementioned order of exclusion.

WHEREFORE, it is respectfully prayed that the writ of habeas corpus herein be dismissed and the relator remanded to the custody of the respondent.

Dated: New York, N. Y., November 10, 1948.

ALVIN LIEBERMAN.

22

Traverse

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

Civil 47-585

[SAME TITLE]

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

23

Ellen Knauff, the relator herein, as and for a traverse to the return of respondent, says:

(1) I hereby repeat and re-iterate all allegations of the petition for habeas corpus.

(2) I applied for admission pursuant to section 232 of title 8, U. S. C. (Public Law 271, of 1945) as the wife of a United States citizen having an honorable discharge certificate from the armed forces of the United States during the Second World War. Said statute provides, with respect

24 to spouses of such veterans, that they

> "shall, if otherwise admissible under the immigration laws and if application for admission is made within three years of December 28, 1945, be admitted to the United States."

Contrary to the mandates of the statues I have been detained without reason at Ellis Island since August 14, 1948, and illegally deprived of my liberty.

(3) The proceedings before the Immigration and Naturalization Service are illegal and arbitrary in that the statutory proceedings were not administered to me. Pur-

suant to 8 U. S. C. 153 Boards of Special Inquiry shall have authority to determine whether an alien is allowed to land. I was not placed before such board. No exclusion order was entered against me as provided by law. I was held at Ellis Island and for five weeks refused seeing a lawyer and access to the courts. During this time I was secretly examined and questioned by an official and finally advised that I was excluded from the United States. I submit that this procedure is contrary to law.

(4) The reason or excuse for my exclusion has been stated by Attorney General Tom C. Clark in a letter addressed to Mr. Joseph D. Nunan who intervened in my behalf. This letter reads as follows:

"THE ATTORNEY GENERAL
WASHINGTON.

October 4, 1948.

Dear Joe:

Since talking with you last week, I have again looked into the case of Mrs. Ellen Knauff.

I can see no alternative to excluding her. She was formerly a paid agent of the Czechoslovakian Government, and reported on American personnel assigned to the Civil Censorship Division in Germany. The Federal Bureau of Investigation feels that she would be a hazard to internal security.

I am sorry not to be able to give you a more favorable conclusion.

With every kind wish,

Sincerely,
NUNAN,
Attorney General.

Joseph D. Nunan, Jr., Esquire,
Commonwealth Building,
Washington 6, D. C."

28 *Traverse*

(5) I hereby state that the facts stated in this letter are untrue and that there is no evidence upon which this charge is based and that I was never confronted with any evidence to substantiate this charge.

I am of German Jewish descent. Prior to the war I was admitted to Great Britain as a refugee. Being a violent anti-Nazi, I enlisted in the royal air force where I served honorably from January 1, 1943, to May 30th, 1946. At the time of my discharge I was a flight sergeant and my discharge papers state:

29 "(c) Cause of discharge Services no longer required at own request .....

(d) General character (1) during service Very Good, (11) on discharge Very Good .....

She is very intelligent and of good personality and character. She has given every satisfaction."

The discharge papers were executed by the Air Commodore on July 26, 1946.

(6) Upon my discharge from the Royal Airforce I found employment with the American War Department, 30 Occupation Forces, in Frankfurt, Germany. I served there first for the Civil Censorship Divisions, thereafter for the Signal Division. I left this employment temporarily after my marriage in order to go to the United States, in June 1948. My service record in the War Department was exemplary and I have favorable certificates from every American superior for whom I worked. I would still be with the U. S. Army, had I not had the desire to establish residence in the United States within the time limited by Public Law 271 of 1945, i.e. before December 28, 1948.

(7) In order to comply with the requirements of said law I was given leave of absence, with the understanding

that after my admission to the United States for permanent residence I would return to Frankfort to continue my service in behalf of the government of the United States. 31

(8) I married my husband in February 1948 with the consent of the Commanding General of the Frankfurt military post of the U. S. Army. Before such consent is given, a thorough check is made by the Office of the Judge Advocate General. Only after I had been given a clean bill by all service commands and intelligence agencies were we permitted to marry. 32

(9) I believe that I am a victim of a foul denunciation of a woman jealous of my husband. I submit that I should not be treated by the Department of Justice the way I have been treated, without a hearing and on secret denunciations.

(10) I never gave any information to any previous or present Czech government. I never received a penny in payment from any Czech Government.

(11) My husband came to this country on a special furlough, to help me in my trouble. He has to return to his post on November 22, 1948. Request is made to take his testimony at once that it will be available before his departure. 33

(12) There is no legal basis for rule 175.57 C. F. R. and the Star Chamber proceedings administered to me thereunder.

WHEREFORE I pray this court to release me from custody.

ELLEN KNAUFF.

34

Excerpt From Stenographer's Minutes

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

Civ. 47-585

[SAME TITLE]

Before:

HON. MURRAY HULBERT,

35 *District Judge.*

New York, November 16, 1948,
11:45 A. M.

Appearances:

GUNTHER JACOBSON, ESQ.,
Attorney for Relator.

JOHN F. X. McGOHEY, ESQ., United States Attorney,
For the Respondent;

By William J. Sexton, Esq., Assistant United States Attorney.

36

After argument of counsel and presentation of certain documents to the court, the court ruled as follows:

Let the stenographer have these letters so that they can be put in the record, and you can have them back.

Mr. Jacobson: Very good, sir.

(Marked Relator's Exhibits 1 to 10 inclusive.)

37

Relator's Exhibit 1

GROUP "B" 7742 CIVIL CENSORSHIP DIVISION

EUROPEAN COMMAND

APO 757 U. S. ARMY

6 August 1947

201—BOXHORNOVA, Ellen

SUBJECT: Recommendation of Ellen BOXHORNOVA

To : Whom it may concern

1. This is to state that Ellen BOXHORNOVA, Allied Civilan 38
Employee, has been employed with this organization as a Relevant Record Analyst and Monitor from 27 May 1946 to present date.

2. Employee's conduct has been satisfactory and her last efficiency rating reads: "Very Good".

FOR THE COMMANDING OFFICER:

MARK WINN
1st Lt., CAC
Adjutant

Telephone: Frankfurt 85051 39

2

3

Mr. Jay J. Van Trawver

40

Relator's Exhibit 2

20 March 1947.

My dear Hendry,

Learning that my friend, Ellen Boxhornova, was planning to stop over at Nurnberg on her way to Prague, I have asked her to drop in to see you and convey my cordial regards to you.

I have known Ellen practically since my arrival in Frankfurt, and have had many opportunities of exchang-
41 ing ideas with her, and generally of appraising her intelligence and character. My appreciation of her abilities and her physical charm has grown increasingly with every new encounter. In my opinion she is far above the average in background and general competence.

Ellen is at present employed as a Research Analyst with the CCD. She mentioned to me, however, that she was planning to resign shortly in order to rejoin the WAAF's with whom she served a number of years during the war. I tried to dissuade her from this decision because I feel that her special knowledge of things German, her
42 perfect command of the English language, and her insight into current problems could be used to greater advantage by the United States Government in Germany at this time.

I am convinced that she would be an invaluable asset to you in connection with the Nurnberg trials. I strongly

recommend Ellen Boxhornova to you for the highest consideration which it is in your power to extend to her.

With warm regards,
M. J. ARONSON
Major JAGD

The Honorable
Henry A. Hendry,
Secretary General,
International Military Tribunal,
Nurnberg, Germany.

33. DECORATIONS AND CITATIONS

EUROPEAN-AFRICAN-MIDDLE EASTERN SERVICE MEDAL, GOOD CONDUCT MEDAL, WORLD WAR II VICTORY MEDAL, AMERICAN SERVICE MEDAL

34. WOUNDS RECEIVED IN ACTION

NONE

35. LATEST IMMUNIZATION DATES

SMALLPOX	TYPHOID	TETANUS	OTHER (specify)
28AUG44	14AUG45	31AUG44	NONE

36. SERVICE OUTSIDE CONTINENTAL U.S. AND RETURN

DATE OF DEPARTURE	DESTINATION	DATE OF ARRIVAL
6 OCT 44	ETO	20 OCT 44
31 DEC 45	USA	10 JAN 46

37. TOTAL LENGTH OF SERVICE

CONTINENTAL SERVICE			FOREIGN SERVICE		
YEARS	MONTHS	DAYS	YEARS	MONTHS	DAYS
1	11	14	1	2	5

38. HIGHEST GRADE HELD

TEC 4

39. PRIOR SERVICE

NONE

40. REASON AND AUTHORITY FOR SEPARATION CONVENIENCE OF THE GOVERNMENT AR 615-365 15 DEC 44 AND RR 1-1 (DEMOBILIZATION)

41. SERVICE SCHOOLS ATTENDED

100TH DIV RADIO SCH 200 HOURS RADIO OPERATOR 1943

42. EDUCATION (Years)

Grammar	High School	College
8	2	0

PAY DATA

43. LONGEVITY FOR PAY PURPOSES			44. MUSTERING OUT PAY		45. SOLDIER DEPOSITS	46. TRAVEL PAY	47. TOTAL AMOUNT, NAME OF DISBURSING OFFICER
YEARS	MONTHS	DAYS	TOTAL	THIS PAYMENT			
3	1	26	$ 300	$ 100	NONE	$ 4.50	253.61 J HARRIS COL FD

INSURANCE NOTICE

IMPORTANT IF PREMIUM IS NOT PAID WHEN DUE OR WITHIN THIRTY-ONE DAYS THEREAFTER, INSURANCE WILL LAPSE. MAKE CHECKS OR MONEY ORDERS PAYABLE TO THE TREASURER OF THE U. S. AND FORWARD TO COLLECTIONS SUBDIVISION, VETERANS ADMINISTRATION, WASHINGTON 25, D.C.

48. KIND OF INSURANCE			49. HOW PAID		50. Effective Date of Allotment Discontinuance	51. Date of Next Premium Due (One month after 50)	52. PREMIUM DUE EACH MONTH	53. INTENTION OF VETERAN TO		
Nat. Serv.	U.S. Govt.	None X	Allotment	Direct to V. A.				Continue	Continue Only	Discontinue
							$ NONE		$	

54. RIGHT THUMB PRINT

55. REMARKS (This space for completion of above items or entry of other items specified in W. D. Directives)

LAPEL BUTTON ISSUED
INACTIVE ERC FROM 21 NOV [redacted] TO 27 NOV 42
ASR SCORE (2 SEP 1945)-55

4317

56. SIGNATURE OF PERSON BEING SEPARATED

Kurt A. Knauff

57. PERSONNEL OFFICER (Type name, grade and organization - signature)

J E WHITE JR
CAPT AC

WD AGO FORM 53 - 55
1 November 1944

This form supersedes all previous editions of WD AGO Forms 53 and 55 for enlisted persons entitled to an Honorable Discharge, which will not be used after receipt of this revision.

1/2

Relator's Exhibit 3

STANDARD FORM 50
UNITED STATES
CIVIL SERVICE COMMISSION
OCTOBER 1946

NOV 16 1948

Pet. Ex. 3

WAR DEPARTMENT

FORM APPROVED
BUDGET BUREAU NO. 51-R004

NOTIFICATION OF PERSONNEL ACTION

Joj

1. NAME (MR.—MISS—MRS.—FIRST—MIDDLE INITIAL—LAST)	2. DATE OF BIRTH	3. JOURNAL OR ACTION NO.	4. DATE
Ellen Kneuff	1-1-15		March 4, 1948

This is to notify you of the following action affecting your employment:

5. NATURE OF ACTION (USE STANDARD TERMINOLOGY)	6. EFFECTIVE DATE	7. CIVIL SERVICE OR OTHER LEGAL AUTHORITY
Reassignment - Correction	March 1,1948	Schedule A-1-?

FROM		TO
Clerk Typist Sig-P&T-262	8. POSITION TITLE	Clerk Steno Sig-EX-470
2-3, 11500 base p.a.	9. SERVICE, GRADE, SALARY	Same
Chief Signal Officer, P & T Signal Treining & Survey Frankfurt, Germany APO 757	10. ORGANIZATIONAL DESIGNATIONS	Same
EUCOM	11. HEADQUARTERS	Same
X FIELD ☐ DEPARTMENTAL	12. FIELD OR DEPT'L	X FIELD ☐ DEPARTMENTAL

13. REMARKS

Efficiency rating is good.

Nationality: Czech
Residence : UK

Relator's Exhibit 3

COPY OF WAR DEPARTMENT NOTIFICATION OF PERSONNEL ACTION

(See opposite page ☛)

Relator's Exhibit 4

Copy of War Department Notification of Personnel Action

(See opposite page ☛)

Relator's Exhibit 4

NOV 16 1948

Pltf. Ex. #4

STANDARD FORM 50
UNITED STATES
CIVIL SERVICE COMMISSION
OCTOBER 1946

WAR DEPARTMENT

FORM APPROVED
BUDGET BUREAU NO. 55-[illegible]

NOTIFICATION OF PERSONNEL ACTION

JOJ

1. NAME (MR.—MISS—MRS.—FIRST—MIDDLE INITIAL—LAST)	2. DATE OF BIRTH	3 JOURNAL OR ACTION NO	4 DATE
Ellen Knauff	1-1-15		Mar 4, 1948

This is to notify you of the following action affecting your employment:

5. NATURE OF ACTION (USE STANDARD TERMINOLOGY)	6. EFFECTIVE DATE	7. CIVIL SERVICE OR OTHER LEGAL AUTHORITY
Name Change from: Ellen Boxhorsova	Feb 28, 1948	CS Rule XIII

FROM		TO
Clerk Typist SIG-P&T-262	8. POSITION TITLE	Same
CAF-3, $1500 base p.a.	9. SERVICE, GRADE, SALARY	Same
CSIGO, P & T Signal Training & Survey, Frankfurt, Germany APO 757	10. ORGANIZATIONAL DESIGNATIONS	Same
EUCOM	11. HEADQUARTERS	Same
[X] FIELD [ ] DEPARTMENTAL	12. FIELD OR DEPT'L	[X] FIELD [ ] DEPARTMENTAL

13. REMARKS

Name change due to marriage February 28, 1948. Employee is married to a U.S. Civilian, CPC-8.

Nationality: Czech
Residence : UK

Relator's Exhibit 7

IC Form 1-1 (19 Mar 47)

(Classification)

INTERNAL ROUTE SLIP

NOV 16 1948

Peth. Ex 7

HEADQUARTERS, EUROPEAN COMMAND

FILE NO:

SUBJECT:

DATE: 17 November 1947

(Number each memo or minute consecutively Fill in each column, signed legibly draw a line across the sheet. Use entire width of sheet for long memoranda)

No	From	Pass to	Date	HAS THIS PAPER BEEN COORDINATED WITH ALL CONCERNED?
1	Chief Sig Tng Suv Team PP&T Div CCSigO	To Whom it May Concern	17 Nov 1947	1. Miss Ellen Boxhornova has been employed by this office since 1 September 1947 until the present time. 2. On or about 1 December 1947 Miss Boxhornova will be available for reassignment as this branch is to be dissolved. 3. Miss Boxhornova has proved very capable as a typist, the only position she held in my employ. She is reliable, conscientous and trustworthy and I would be very pleased to have her work for me again. 4. The following items are submitted: a. Character : Excellent b. Efficiency: Excellent. GEORGE M. STRAWN Captain, Signal Corps

58

Relator's Exhibit 5

HEADQUARTERS
EUROPEAN COMMAND

APO 403 US. Army
18 June 1948

TO WHOM IT MAY CONCERN:—

Mrs. Ellen Knauff has been employed as my secretary since 1 April 1948.

59

I have always found Mrs. Knauff to be discreet, capable, and interested in her work. I do not hesitate to recommend her for employment.

W. W. LINDSAY
W. W. LINDSAY
Lt. Colonel
Signal Corps

WWL:mrh

60

61

Relator's Exhibit 6

HEADQUARTERS
EUROPEAN COMMAND
Office of the Chief Signal Officer

APO 757
9 March 1948

TO WHOM IT MAY CONCERN:

1. Miss Ellen Boxhornova has been under my personal daily observation during the past six months. Her assignment included the usual stenographic, and typing duties and in addition librarian responsibilities for a highly technical and specialized library for the Signal Corps Technical Board. 62

2. Miss Boxhornova always exhibited excellent competence in handling her assignment without continuous supervision and while achieving efficient results. Her good judgement and common sense resulted in work well done. I believe Miss Boxhornova is capable of filling any position calling for the above characteristics.

63

George W. Olson
GEORGE W. OLSON
Captain, Signal Corps

Chief Signal Officer, P & T Signal Training & Survey Frankfurt, Germany APO 757	10. ORGANIZATIONAL DESIGNATIONS	Same	
EUCOM	11. HEADQUARTERS	Same	
X FIELD ☐ DEPARTMENTAL	12. FIELD OR DEPT'L	X FIELD ☐ DEPARTMENTAL	

13. REMARKS

Efficiency rating is good.

Nationality: Czech
Residence : UK

1500.00 Base p.a. rate
130.00 Qtrs.
511.00 Subs.
2141.00 Gross p.a. rate for 46 hr. wk.

This instrument corrects item #1 of SF 50 dated March 1, 1948 to show employee's name is Ellen Kneuff instead of Ellen Boxbornova due to marriage on February 28, 1946.

Sally A. Chapin

SALLY A. CHAPIN
CHIEF ADMIN

14. SIGNATURE OR OTHER AUTHENTICATION

15. VETERAN'S PREFERENCE								16. POSITION CLASSIFICATION ACTION			
NONE	5 PT.	10 POINT			WWII	WWI	OTHER	NEW	VICE	L.A.	REAL.
		DISAB.	WIFE	WIDOW							

17. SEX	18. RACE	19. APPROPRIATION	20. SUBJECT TO C. S. RETIREMENT ACT (YES—NO)	21. DATE OF OATH (ACCESSIONS ONLY)	22. LEGAL RESIDENCE
F	W	FROM: TO:	No		

U. S. GOVERNMENT PRINTING OFFICE 16—80625-1

AGL-(3)-3-48-30M-11960-3007

Relator's Exhibit 7

COPY OF INTERNAL ROUTE SLIP OF HEADQUARTERS, EUROPEAN COMMAND

(See opposite page ☛)

EUCOM	11. HEADQUARTERS	Same
[X] FIELD [ ] DEPARTMENTAL	12. FIELD OR DEPT'L	[X] FIELD [ ] DEPARTMENTAL

13. REMARKS

Name change due to marriage February 28, 1948. Nationality: Czech
Employee is married to a U.S. Civilian, CPC-8. Residence : USA

$1500.00 Base p.a. rate
180.00 Qtrs.
511.00 Subs.
$2191.00 Gross p.a. rate for 48 hr. wk.

Sally A. Chapin

SALLY A. CHAPIN
Chief Adm.

14. SIGNATURE OR OTHER AUTHENTICATION

15. VETERAN'S PREFERENCE								16. POSITION CLASSIFICATION ACTION			
NONE	5 PT.	10 POINT			WWII	WWI	OTHER	NEW	VICE	I. A.	REAL.
		DISAB.	WIFE	WIDOW							

17. SEX	18. RACE	19. APPROPRIATION	20. SUBJECT TO C. S. RETIREMENT ACT (YES—NO)	21 DATE OF OATH (ACCESSIONS ONLY)	22. LEGAL RESIDENCE
F	W	FROM: TO:	NO		

U. S. GOVERNMENT PRINTING OFFICE 16—80666—1

4. The following items are submitted:

a. Character : Excellent
b. Efficiency: Excellent.

GEORGE M. STRAHN
Captain, Signal Corps
Chief, Sig. Tng. Suv. Team

GMS/eb/Frankfurt 8912

(over)

(Classification)

7

70

Relator's Exhibit 8

THE ATTORNEY GENERAL

WASHINGTON

October 4, 1948

Dear Joe:

Since talking with you last week, I have again looked into the case of Mrs. Ellen Knauff.

I can see no alternative to excluding her. She was
71 formerly a paid agent of the Czechoslovakian Government, and reported on American personnel assigned to the Civil Censorship Division in Germany. The Federal Bureau of Investigation feels that she would be a hazard to internal security.

I am sorry not to be able to give you a more favorable conclusion.

With every kind wish,

Sincerely,
TOM
Attorney General

72 Joseph D. Nunan, Jr., Esquire
Commonwealth Building
Washington 6, D. C.

P. S. Come see us—Mary says she never hears when Catherine is this way—Can't you remedy this?

73

Relator's Exhibit 9

THE ATTORNEY GENERAL

WASHINGTON

September 9, 1948

Dear Joe:

This will acknowledge your letter of August 27, on behalf of Mrs. Ellen Knauff.

I recall her case very well and after giving it very careful consideration, signed the exclusion order, for security reasons. I regret very much that I haven't a more favorable report for you. 74

With kindest personal regards,

Sincerely,
TOM
Attorney General

Joseph D. Nunan, Jr., Esquire
Commonwealth Building
1625 K Street, N. W.
Washington 6, D. C.

75

P. S. When you are this way give me a ring.

76

Relator's Exhibit 10

ALLIED/NEUTRAL EXTENSION OF EMPLOYMENT AGREEMENT FORM (REVISED)

Part I.

1. My present employment agreement expires on 26 May 1948 and I (do) agree to extend such employment agreement in my present position until 26 November 1948 with C/Sig Officer. (Maximum period of extension is 6 months; minimum period of extension is 4 months.)

77

2. I understand that if a replacement for my position is available before the expiration of this extension, my employment agreement will be terminated upon fifteen (15) days notice.

KNAUFF
BOXHORNOVÁ, ELLEN
Type name

Sig–APD–54, Clk Typ, CWS–3
Position–Title–No–Grade

78

ELLEN KNAUFF
Signature

3 March 1948
Date

1—Employee
1—201 file

(Over)

Relator's Exhibit 10 79

Part II.

Check

x 1. Recommend retention of employee in his present position. It is not anticipated that position will be abolished on or before termination of above extension of employment agreement.

2. Do not recommend retention of employee in present position or elsewhere in the European Command for reasons listed below: (be specific—give facts.)

80

Employee's Supervisor W. W. Lindsay
Signature
W. W. LINDSAY
Lt Col Sig C
3 Mar 1948
Date

Comments of Civilian Personnel Liaison Agent:——

Personnel Liaison Agent——————
Signature 81

Date

Note:

1. Original of this form is to be retained by the employee.
2. Duplicate is to be returned to Civilian Personnel Branch *immediately* with WD Form 72 attached, requesting replacement on or about termination date of current agreement.
3. Extension forms received without WD Form 72 will be returned for proper action.

82

Opinion of Hulbert, *D. J.*

#1658

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

Civ. 47-585

[SAME TITLE]

---

83 *Appearances*:

GUNTHER JACOBSON, ESQ.,
Attorney for Relator,
36 West 44th Street,
New York 18, N. Y.

HONORABLE JOHN F. X. MCGOHEY,
United States Attorney for the
Southern District of New York
Attorney for Respondent.

WILLIAM J. SEXTON, ESQ.,
Assistant United States Attorney.

84 ALVIN LIEBERMAN, ESQ.,
Attorney, U. S. Department of Justice,
Immigration and Naturalization Service.
Of Counsel.

This habeas corpus proceeding brings on for review, consideration and interpretation the provisions of Title 22 U. S. C. §§ 223 *et sec* (Foreign Relations and Intercourse), Presidential Proclamation No. 2523, November 14, 1941, § 157.57(a) of Title 8 of the Code of Federal

Regulations, and Title 9 U. S. C. § 232 (Aliens and Nationality).

Prima facie the Relator's application appears to have real merit.

She was born in Germany on January 1, 1915. In 1939, her attorney alleges, she found refuge from the Nazis in Great Britain, and thereafter, served from January 1, 1943 to May 30, 1946, in the Royal Air Force as a Flight Sergeant, with a character rating of "very good", equivalent to the United States Air Service rating of "excellent". Thereafter she was employed by the American Military 86
Government in Germany, first, in the Censorship Division, until August 1947, when that office was dissolved, and then by the Signal Division. That her services were satisfactory is attested by her officers who were her superiors, as well as her character and loyalty in exhibits submitted with her counsel's memorandum.

On February 28, 1948, petitioner married Kurt W. Knauff, which marriage was consummated with the consent of the Office of the Advocate General of the United States Army, at Frankfort, Germany. The Relator's husband, who is a native of Germany, became a citizen of the United States by naturalization on April 23, 1943, in the 87
United States District Court for the Eastern District of South Carolina. During World War II he was a soldier in the armed forces of the United States from November 21, 1942 to January 17, 1946, at which time he received an honorable discharge at Fort Dix Separation Center, and returned to the American Army of Occupation in Germany in a civilian capacity.

In June 1948 the Relator secured a temporary leave of absence and left the employ of the Signal Division of the United States Army in Germany, for the purpose of visiting the United States in order to make application for naturalization under § 312 of the Nationality Act of 1940

Exhibit 11 Annexed to Affidavit of Gunther Jacobson

R.A.F. FORM 1394.

The corner of this certificate to be cut off if the airman airwoman is charged with a "bad" character, or with disgrace or if specially directed by the Air Council.

ROYAL AIR FORCE.

BRIEF STATEMENT OF SERVICE AND CERTIFICATE OF DISCHARGE OF

SURNAME BOXHORNOVA, OFFICIAL No. 2146772.

CHRISTIAN NAMES Ellen.

Date of ~~enlistment~~ enrolment 1st.January,1943. Terms of ~~enlistment~~ enrolment D. of P.E.

(a) Date reported for regular service 8th. February,1943.

Branch of Air Force in which enlisted W.A.A.F. R.A.F. trade on discharge Clerk/General Duties(M).

Date of discharge 30th.May,1946. Rank on discharge Flight Sergeant.

Cause of discharge Services no longer required - at own request.

(Para. 652 Clause 22 King's Regulations and Air Council Instructions.)

(d) General character (i) during service Very Good. (ii) on discharge Very Good.

(e) Degree of trade proficiency :—A -. B Satisfactory.

Special qualifications None.

(f) Medals, Clasps, Decorations, Mentions in Despatches, Special Commendations, etc.

DESCRIPTION OF ABOVE-NAMED AIRMAN/AIRWOMAN ON DISCHARGE.

Date of birth 1st. January,1915. Marks or scars Vacc. 4 right arm.

5 4 1 Vacc. 1 left arm. Birthmark left knee.

Exhibit 14 Annexed to Affidavit of Gunther Jacobson

Form N-400
U. S. DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
(Rev. 1-1-45)

Form Approved
BUDGET BUREAU NO. 43 R079.1

No. .....

Application for a Certificate of Arrival and Preliminary Form for Petition for Naturalization

For use in searching records of arrival:

RECORDS EXAMINED

Card index .....
Index books .....
Manifests .....
.....
.....

Use Form N-215 or N-230 in issuing certificate of arrival on this application.

RECORD FOUND

Place .....
Name .....
.....
Date .....
Manner .....
Marital status .....
.....
(Signature of person making search)

TO THE APPLICANT: DO NOT WRITE ABOVE THIS LINE. READ CAREFULLY AND FOLLOW THE INSTRUCTIONS ON LAST PAGE HEREOF.

☛ *Take or mail this application to:*
IMMIGRATION AND NATURALIZATION SERVICE, 70 Columbus Ave. New York 23, N. Y.

Date November 26 nd, 1948

I, ELLEN KNAUFF (Name in full—print), residing at 114-20 133 rd street, South Ozone Park, L. I. N. Y. (Number and street) at present detained at Ellis Island (City or town), desire to file a petition for naturalization in the U. S. District Court (Name of court) Southern District of New York (State), I submit herewith a statement of facts to be used in filing such petition, three photographs of myself, each of which I have signed, and my declaration of intention (first paper), if one is required.

I hereby apply for a Certificate of Arrival (if required) showing my lawful entry into the United States for permanent residence. **NOTE.—IF THIS APPLICATION IS ACCOMPANIED BY A DECLARATION OF INTENTION (FIRST PAPER) MADE SINCE JULY 1, 1929, ANSWER ONLY QUESTION NUMBER 5 ON THIS PAGE.**

(1) I arrived in the United States through the port of NEW YORK (City or town), N. Y. (State)
under the name of ELLEN KNAUFF, on AUGUST 14 1948 (Month) (Day) (Year)
on the vessel USAT COMFORT
(If arrival was through {Canada / Mexico} I arrived at the port of ..... (If otherwise than by vessel, show manner of arrival) {Canada / Mexico}
on ..... on the vessel .....

(18) In what places in the United States have you resided during the past five years?

never resided here before — From ____ to ____
(City or town) (State) (Month) (Year) (Month) (Year)

From ____ to ____
(City or town) (State) (Month) (Year) (Month) (Year)

From ____ to ____
(City or town) (State) (Month) (Year) (Month) (Year)

(19) What were the names, occupations, and addresses of your employers during the last 5 years?

ROYAL AIR FORCE — WAAF 2176772 — LONDON — ENGLAND — 1943-1946
(Employer's name) (Occupation) (Number and street) (City) (State) (Dates of employment)

WAR DEPARTMENT — CLERK — WASHINGTON — D.C. — 1946-1948
(Employer's name) (Occupation) (Number and street) (City) (State) (Dates of employment)

(20) Have you read the following oath of allegiance? YES

I HEREBY declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely without any mental reservation or purpose of evasion: So Help Me God.

Are you willing to take this oath in becoming a citizen? YES

Of what country are you now a citizen or subject? STATELESS

(21) If necessary, are you willing to take up arms in defense of the United States? YES

Have you ever, during the time this country was at war, deserted the military or naval forces of the United States, or departed from the jurisdiction of the enrollment district or the United States to avoid draft into the military or naval forces of the United States? NO

(22) How many times have you ever been married? TWICE

(23) Have you ever been an inmate of an insane asylum? NO

(24) Have you ever been arrested or charged with violation of any law of the United States or State or any city ordinance or traffic regulation? NO

If so, give date, place and cause of arrest and disposition of each case

(25) Have you ever been deported from the United States, or are deportation proceedings now pending against you? NO. I AM ILLEGALLY HELD AT ELLIS ISLAND now.
~~If so, state all facts~~

(26) During the last ten (10) years I have been a member of the following organizations and no other YOUNG WOMEN CHRISTIAN ASSOCIATION IN LONDON AND ROYAL AIR FORCE ASSOCIATION IN LONDON

(27) Was your father or mother ever a citizen of the United States? NO If so, give full particulars

(28) Did you register under the Alien Registration Act of 1940? I do not know, I dont believe so.

88 *Opinion of Hulbert, D. J.*

by virtue of the provisions of Public Law 271 approved November 28, 1945 (§§ 232 to 237 Title 8 U. S. C.) which Relator claims conferred that right upon her as a War Bride provided she established her residence in the United States before December 28, 1948.

She arrived at the Port of New York on August 14, 1948, and has since been detained at Ellis Island subject to an exclusion order.

When her husband, who had procured a leave of absence from his civilian post under the United States Army in
89 Germany and came to New York to aid his wife, was notified by the Office of the Commissioner of Immigration and Naturalization that Relator had been excluded from the United States for security reasons, and that her appeal from an exclusion order had been denied, he instituted this proceeding October 9, 1948, but returned to Germany prior to the expiration of his leave of absence.

The Relator, after examination by an Immigration Inspector, was ordered excluded by the Attorney General pursuant to the provisions of § 175.57(a) of Title 8 of the Code of Federal Regulations*, as an alien whose entry

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* "Any alien, even though in possession of a permit to enter, or
90 exempted under these regulations from obtaining a permit to enter, may be excluded temporarily if at the time he applies for admission at a port of entry it appears that he is or may be excludable under one of the categories set forth in §175.53. The official excluding the alien shall immediately report the facts to the head of his department, who will communicate such report to the Secretary of State. Any alien so temporarily excluded by an official of the Department of Justice shall not be admitted and shall be excluded and deported unless the Attorney General, after consultation with the Secretary of State, is satisfied that the admission of the alien would not be prejudicial to the interests of the United States. Any alien so temporarily excluded by any other official shall not be admitted and shall be excluded and deported unless the Secretary of State is satisfied that the admission of the alien would not be prejudicial to the interests of the United States."

into the United States would be prejudicial to the interests of the United States.

The promulgation of this regulation was authorized by Title 22 U. S. C. § 223, which reads as follows:

> "§ 223. *War-time restrictions generally.* When the United States is at war or during the existence of the national emergency proclaimed by the President on May 27, 1941, or as to aliens whenever there exists a state of war between, or among, two or more states, and the President shall find that the interests of the United States require that restrictions and 92
> prohibitions in addition to those provided otherwise than by sections 223-226b of this title be imposed upon the departure of persons from and their entry into the United States, and shall make public proclamation thereof, it shall, until otherwise ordered by the President or Congress, be unlawful. As amended June 21, 1941, c.210, §1, 55 Stat. 252."

The Presidential Proclamation issued November 14, 1941** pursuant thereto is set forth in the margin.

** "Whereas the act of Congress approved on May 22, 1918 (40 93
Stat. 559), as amended by the Act of Congress approved on June 21, 1941 (Public Law 114, 77th Cong.; chap. 210, 1st sess.; 55 Stat. 252), vests authority in me to impose restrictions and prohibitions in addition to those otherwise provided by law upon the departure of persons from and their entry into the United States when the United States is at war, * * *

Whereas the exigencies of the present international situation and of the national defense require that restrictions and prohibitions, in addition to those otherwise provided by law, be imposed upon the departure of persons from and their entry into the United States, including the Panama Canal Zone, the Commonwealth of the Philippines, and all territory and waters, continental or insular, subject to the jurisdiction of the United States;

Now, Therefore, I, Franklin D. Roosevelt, President of the United States of America, acting under and by virtue of the authority vested

94 *Opinion of Hulbert, D. J.*

It is the contention of the Relator that she is entitled to admission into the United States pursuant to the provisions of the so-called War Brides Statute, Title 8 U. S. C. §232, and the court sets forth the language of the statute as quoted by Relator's counsel:

> "Notwithstanding . . . the documentary requirements of any of the immigration laws or regulations, executive orders, or Presidential proclamations issued thereunder, alien spouses . . . of U. S. citizens . . . having an honorable discharge cer-
95 tificate from the armed forces of the U. S. during World War II shall, if otherwise admissible under the immigration laws . . . be admitted to the United States . . ."

Relator's counsel further quotes § 236 of Title 8 U. S. C.:

> "For the purpose of sections 232-237 of this title, World War II shall be deemed to have commenced on December 7, 1941, and to have ceased on upon the termination of hostilities as declared by the President . . ."

96 And contends that the termination of hostilities was proclaimed at 12 o'clock noon on December 31, 1946, by Presi-

---

in me as set forth above, do hereby find and publicly proclaim and declare that the interests of the United States require that restrictions and prohibitions, in addition to those otherwise provided by law, shall be imposed upon the departure of persons from and their entry into the United States, * * * and I make the following rules, regulations and orders which shall remain in force and effect until otherwise ordered by me: * * *

No alien shall be permitted to enter the United States if it appears to the satisfaction of the Secretary of State that such entry would be prejudicial to the interests of the United States as provided in the rules and regulations hereinbefore authorized to be prescribed by the Secretary of State, with the concurrence of the Attorney General."

dential Proclamation 2714, 12 F. R. 1, and consequently, as far as alien spouses are concerned the war is at an end.

This court had occasion recently in the disposition of motions to dismiss an indictment against twelve alleged Communists for conspiracy to state (*United States* v. *Foster et al.*, 120 N. Y. Law Journal, 1133, 1134, November 15, 1948):

> "Nor is the assertion that we are now living in peace times technically correct because World War II has not been brought to a final close, and, as a matter of fact, we are living in an atmosphere of 98 threatened strife."

But there is a higher authority (*Ludecke* v. *Watkins, District Director of Immigration*, 335 U. S. 160 (1948)), in which there is an illuminating discussion pages 166 to 170.

It is to be noted that §232 of Title 8 contains this language, "if otherwise admissible under the immigration laws", which was discussed and construed by Judge Bone in *Bonham* v. *Bouiss*, C. C. A. 9th, 161 F. (2d) 667 (1947), page 679:

> "While the legislation was designed to facilitate the admission of spouses and children acquired by 99 members of our Armed Forces while overseas, it is clear that Congress did not go further and provide complete exemption from *all* immigration requirements. The italicized portions of the statute above quoted clearly demonstrate that Congress intended to let down only two bars—one as to physical and mental defects and the other as to documentary requirements. All others are retained by the phrase 'if otherwise admissible under the immigration laws'."

Therefore, it cannot be said that §232 of Title 8 in any way affected the Presidential Proclamation No. 2523 or the statutory enactment which authorized it.

100 *Opinion of Hulbert, D. J.*

It is further urged by the counsel for the Relator that

> "Aliens arriving in the United States may be excluded according to law pursuant to sections 136 and 137 of Title 8 U. S. C. According to these provisions there are excluded: Anarchists, opposers of organized government, advocates of violence, publishers of subversive doctrines and similar elements."

And then he contends that in such cases boards of special inquiry must be called into action pursuant to section 153 of Title 8, U. S. C. But, manifestly, the Relator is not in
101 that category. On the other hand, the rule set forth in the Presidential Proclamation 2523 expressly provides that it must appear to the satisfaction of the Secretary of State that such entry would be prejudicial to the interests of the United States with the concurrence of the Attorney General.

As stated in §175.57b of Title 8 of the Code of Federal Regulations:

> "In the case of an alien temporarily excluded by an official of the Department of Justice on the ground that he is, or may be excludable under one or more of the categories set forth in §173.53*, no hearing by
> 102 a board of special inquiry shall be held until after the case is reported to the Attorney General and such a hearing is directed by the Attorney General or his representative. In any special case the alien may be denied a hearing before a board of special inquiry and an appeal from the decision of that board if the Attorney General determines that he is excludable under one of the categories set forth in §173.53 on the basis of information of a confidential nature, the dis-

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* Subdivision (h)

"Any alien whose admission would endanger the public safety as provided in any Executive order issued in pursuance of the act of Congress approved June 20, 1941 (ch. 209, 5 Stat. 252; 22 U. S. C. Sup. 228, 229."

closure of which would be prejudicial to the public interest."

Not even the court may have access to the record in the Attorney General's office, nor can the court surmise or speculate, but in this case, counsel for the Relator has submitted two letters written by the Attorney General to a person, evidently an intimate personal friend, whose services apparently had been enlisted by Relator or someone on her behalf.

In the first of these letters, the Attorney General wrote on September 9, 1948: 104

"This will acknowledge your letter of August 27, on behalf of Mrs. Ellen Knauff.

"I recall her case very well and after giving it very careful consideration, signed the exclusion order, for security reasons. I regret very much that I haven't a more favorable report for you.

"With kindest personal regards,"

And then on October 4th the Attorney General addressed another letter to the same person reading:

"Since talking with you last week, I have again looked into the case of Mrs. Ellen Knauff. 105

"I can see no alternative to excluding her. She was formally a paid agent of the Czechoslovakian Government, and reported on American personnel assigned to the Civil Censorship Division in Germany. The Federal Bureau of Investigation feels that she would be a hazard to internal security.

"I am sorry not to be able to give you a more favorable conclusion."

Accordingly, the writ is dismissed.

Settle order on notice.

December 4, 1948.

HULBERT,
United States District Judge.

(e) Degree of trade proficiency :—A

Special qualifications None.

(f) Medals, Clasps, Decorations, Mentions in Despatches, Special Commendations, etc.

DESCRIPTION OF ABOVE-NAMED AIRMAN/AIRWOMAN ON DISCHARGE.

Date of birth 1st. January, 1915. Marks or scars Vacc. 4 right arm.

Height 5 ft. 1½ ins. Vacc. 1 left arm. Birthmark left knee.

Complexion Fair.

Colour of eyes Green. Colour of hair Brown.

Airman's or airwoman's signature

(g) Brief statement of any special aptitudes or qualities or any special types of employment for which recommended :—

For the past seven months, this airwoman has been employed as an instructor under the "Educational Vocational Training" scheme. She has proved an able instructor in nutrition, cookery and household management, and her knowledge of German enabled her efficiently to instruct classes in this subject. Her English though not her native tongue is excellent.

She is very intelligent and of good personality and character. She has given every satisfaction.

Unit
Date
Stamp

RECORD OFFICE
26 JUL 1946
ROYAL AIR FORCE

(Signed) [signature]
for Air Commodore,
Commanding Air Officer i/c Records.
Royal Air Force.

Attention is directed to Notes (a) to (g) on reverse.

EX 4 " "

"

U.S. District Court Southern District of New York

I submit herewith a statement of facts to be used in filing such petition, three photographs of myself, each of which I have signed, and my declaration of intention (first paper), if one is required.

I hereby apply for a Certificate of Arrival (if required) showing my lawful entry into the United States for permanent residence. **NOTE.—IF THIS APPLICATION IS ACCOMPANIED BY A DECLARATION OF INTENTION (FIRST PAPER) MADE SINCE JULY 1, 1929, ANSWER ONLY QUESTION NUMBER 5 ON THIS PAGE.**

(1) I arrived in the United States through the port of NEW YORK, N. Y.
under the name of ELLEN KNAUFF
on the vessel U.S.A.T. COMFORT, on AUGUST 24 1948
(If arrival was through {Canada / Mexico} I arrived at the port of ... {Canada / Mexico}
on ... on the vessel ...)

(2) (If arrival by ship) Name of steamship line was U. S. ARMY TRANSPORT
first, second, or third cabin PASSENGER I arrived as a passenger, stowaway, seaman, member of crew, or otherwise ...

(3) The ticket on which I came to this country was bought at no ticket furnished. Transported as war bride
(4) The steamship ticket on which I traveled was in the name of ...
(5) I have not been absent from the United States ...
... (Dates of departure and return, ports of entry, and names of vessels or other means)
I have ... been absent at any other time.

(6) I was born in DORTMUND, GERMANY on JANUARY 1, 1915
(7) My father's full name is/was GUSTAVE RAPHAEL
(8) My mother's maiden name was ELIZABETH STEINWEG
(9) (If a married woman) My maiden name was ELLEN RAPHAEL
(10) My last foreign residence was LONDON, ENGLAND
(11) The place where I took the ship or train which landed me in the United States was BREMERHAVEN GERMANY
(12) I traveled on (an immigration visa, a passport, or permit to reenter) U.S. ARMY TRAVEL ORDERS AS WARBRIDE
(13) I was ... examined by United States immigration officers at NEW YORK, N.Y.
(14) (If not examined, state why, and give the circumstances of your entry) ...
(15) The person in the United States to whom I was coming was MRS. CLARA SCHULZ, KIOWA - KANSAS
(16) The place in the United States to which I was going was KIOWA - KANSAS
(17) The names of some of the passengers or other persons I traveled with, including members of my own family and their relationship to me, if any, are

16—11311-3

OVER

11

(22) How many times have you ever been married? I WIFE

(23) Have you ever been an inmate of an insane asylum? NO

(24) Have you ever been arrested or charged with violation of any law of the United States or State or any city ordinance or traffic regulation? NO

If so, give data, place and cause of arrest and disposition of each case

(25) Have you ever been deported from the United States, or are deportation proceedings now pending against you? NO. I AM ILLEGALLY HELD AT ELLIS ISLAND now.

If so, state all facts

(26) During the last ten (10) years I have been a member of the following organizations and no other YOUNG WOMEN CHRISTIAN ASSOCIATION IN LONDON AND ROYAL AIR FORCE ASSOCIATION IN LONDON

(27) Was your father or mother ever a citizen of the United States? NO If so, give full particulars

(28) Did you register under the Alien Registration Act of 1940? I do not know I dont believe so.

If so, state the number of your Alien Registration Receipt Card I mean received card

(Registration number)

(29) If male, did you register under the Selective Service (Draft) Law of 1940 as amended?

If so state your Draft Board No. Located at

(City) (County) (State)

Classified in class Reason for such classification

(30) Did you yourself fill out this form? YES If not, give the name and address of the person who did with the assistance of my attorney Gunther Jacobson, 36 W 44 N.Y.C

(31) It is my intention in good faith to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which at this time I am a subject or citizen, and it is my intention to reside permanently in the United States. I am not, and have not been for the period of at least 10 years immediately preceding the date of this statement, an anarchist; nor a believer in the unlawful damage, injury, or destruction of property, or sabotage; nor a disbeliever in or opposed to organized government, nor a member of or affiliated with any organization or body of persons teaching disbelief in or opposition to organized government. I am able to speak the English language, unless physically unable to do so. I am, and have been during all of the periods required by law, attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States.

I CERTIFY that all the statements made by me in this application and form are true to the best of my knowledge and belief.

Ellen Krenoff

(Signature of applicant)

c/o Gunther Jacobson, Esq.

(Address at which applicant receives mail)

36 West 44th St.

N.Y.C.

10- 11311-3

106

Order to Show Cause

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE]

Upon the annexed affidavit of Gunther Jacobson, sworn to on December 11, 1948, and upon the petition, writ of habeas corpus herein and the documentary evidence sub-
107 mitted to this Court, and upon the decision of the Hon. Murray Hulbert, D. J., let the respondent by John F. X. McGohey, United States Attorney, show cause at Room 506 of the United States Court House on December 17th, 1948, at 10:30 A. M. or as soon thereafter as counsel can be heard, why the within habeas corpus proceeding should not be reargued; why the decision of Honorable Murray Hulbert, D. J. dismissing the writ should not be set aside and modified and why the writ of habeas corpus herein issued and served should not be sustained; why the Relator should not be afforded such other and further relief as may seem just;

108 And it is further Ordered that pending the decision on this motion the deportation of Respondent be stayed.

Sufficient cause appearing let the service of a copy of this order together with the affidavit upon which it is based, on the U. S. Attorney on or before December 14, 1948, be sufficient.

Dated, New York, N. Y., December 13, 1948.

/s/ HAROLD R. MEDINA
U. S. D. J.

(Seal)

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Affidavit of Gunther Jacobson in Support of Order to Show Cause

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE]

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

110

GUNTHER JACOBSON, being duly sworn, deposes and says. I am the attorney for the Relator.

I respectfully apply for the reargument of this case.

The Relator is a woman of thirty-three years, of German-Jewish origin, who in 1939 found refuge from the Nazis in Great Britain. She served from January 1, 1943 to May 30, 1946 in the Royal Air Force as a flight sergeant, and at the latter date she was honorably discharged from the Royal Air Force. A photostatic copy of the discharge papers is annexed hereto and marked Exhibit 11. Thereafter she was employed by the American Military Government in Germany, first in the Censorship Division until 1947, when that office was dissolved, and then by the Signal Division of the American Military Government in Germany. I am annexing hereto Exhibit 12, a photostatic copy of a mimeographed sheet signed by Mark Winn, 1st Lieut. C.A.C., setting forth the members of the Civil Censorship Division who by special order of July 11, 1947, shortly before this Division was dissolved, were awarded the EAME decoration ribbon for faithful and satisfactory service. The Court will notice that at the passage marked by a check the Relator herein under her previous name was mentioned as one of the recipients of this mark of distinction. The Relator's services were uniformly satisfactory as is attested by all

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her superiors who equally confirmed her excellence of character and her loyalty.

On February 28, 1948, the Relator married Mr. Kurt Knauff. This marriage was consummated with the consent of the office of the Advocate General of the United States, at Frankfort on the Main after considerable checking of the personalities involved. The Relator's husband, who is a citizen of the United States, was a soldier in the Armed Forces of the United States from November 21, 1942, to January 7, 1946, at which time he received an honorable discharge at Fort Dix. He returned to the American Army
113 in Germany in a civilian capacity and is as such now connected with the ~~American~~ Military Government in Frankfort on the Main.

In June 1948, the Relator secured a temporary leave of absence from the Signal Division of the U. S. Army for the purpose of going to the United States. She desired to gain admission to the United States as a war bride, pursuant to Public Law 271 of December 28, 1945 (8 U. S. C. 232-237). She also desired on the occasion of this trip to make immediate application for naturalization under Section 312 of the Nationality Act of 1940, which provides that the spouses of American citizens stationed abroad who are in the em-
114 ploy of the American Government may apply for citizenship if physically present in the United States, in any District Court, without the necessity of showing previous residence in this country.

The Relator arrived at the Port of New York on August 14, 1948. Immediately thereafter she was taken to Ellis Island for detention. No admission hearings of any kind or nature were administered to her. In particular, she was never presented to any board of special inquiry which is the statutory fact finding tribunal that has to decide on the admission of aliens to the United States. After two and one-half months of detention during which no charges were

levied against the Relator, nor was Relator given a chance of refuting any charges, notification was sent to her husband that Relator was denied admission to the United States. The letter of notification dated October 8, 1948, is annexed hereto as a photostatic copy Exhibit 13.

Immediately thereafter Relator's husband who had come to the United States upon receipt of a temporary leave of absence, instituted the present habeas corpus proceeding, in which Mr. Kurt W. Knauff demanded in his own name and in his own behalf as well as in that of his wife, that she be released from custody, and admitted to the United States.

This matter came on for hearing before Hon. Murray Hulbert of this Court on November 16, 1948. Judge Hulbert by decision made and opinion rendered on December 4, 1948, ordered the writ dismissed. No order has been entered yet.

The re-argument herein is sought for the following reasons:

The gist of Judge Hulbert's opinion is that pursuant to the decision of the U. S. Supreme Court in *Ludecke* v. *Watkins*, 335 U. S. 140, the United States is still at war with Germany and therefore the special war powers of the Government are still in existence.

It is submitted that the *Ludecke* case does not meet the particular issues of the present case. Ludecke was not a war bride. He was an alien enemy who had resided in the United States since prior to the war. He was sought to be deported by the Attorney General pursuant to the powers granted to the Attorney General in 50 U. S. C. 21 to 24. In determining whether or not the United States was still at war so that the extraordinary powers of the Alien Enemy Act could be exercised by the Government, the Supreme Court determined in a five to four decision that this country is still at war with Germany.

In the present case reference was made to the Act of December 28, 1945, 8 U. S. C. 232-237. That Act provides:

> " • • • notwithstanding the documentary requirements of any of the immigration laws or regulations, Executive orders, or Presidential proclamations issued thereunder, alien spouses or alien children of United States citizens serving in, or having an honorable discharge certificate from the armed forces of the United States during the Second World War shall, if otherwise, admissible under the immigration laws and if application for admission is made within three years of December 28, 1945, be admitted to the United States *Provided,* That every alien of the foregoing description shall be medically examined at the time of arrival in accordance with the provisions of section 152 of this title, and if found suffering from any disability which would be the basis for a ground of exclusion except for the provision of sections 232-237 of this title, the Immigration and Naturalization Service • • • ."

The Court will notice that the admission of veterans' spouses is ordained if they are otherwise admissible under the Immigration laws. This sentence does not take in the extraordinary police powers of the Attorney General pursuant to Sections 175.52-57 of Title 8 of the Code of Federal regulations. The Act of 1945 also does not permit exclusions pursuant to Presidential proclamations. Only the exclusions under the Immigration laws are maintained and the Court is respectfully requested to reconsider the finding that 8 U. S. C. 232 did not affect Presidential Proclamation 2523 under which the Government has been proceeding.

It is respectfully pointed out that pursuant to 8 U. S. C. 236, the Second World War shall be deemed to have ceased upon the termination of hostilities as declared by the Presi-

dent for the purposes of Public Law No. 271 of 1945. With respect to war brides, therefore, the Second World War is deemed to have ceased and the Court is respectfully requested to examine Judge Hulbert's finding that under the *Ludecke* case cited above we are still at war with Germany. Inasmuch as Ludecke was no war bride, the question here involved was not decided, discussed or otherwise raised or touched in the *Ludecke* decision. 121

It is furthermore respectfully submitted that while as Exhibit 13 above, officially no reasons were given for Mrs. Knauff's exclusion from the United States, the Attorney General stated in his private letter mentioned on the last page of Judge Hulbert's opinion, dated October 4, 1948: 122

> "She was formerly a paid agent of the Czechoslovakian government and reported on American personnel assigned to the Civil Censorship in Germany. The Federal Bureau of Investigation feels that she would be a hazard to internal security."

The attention of the Court is respectfully directed to the fact that the Civil Censorship Division as Exhibit 12, shows, thought otherwise. At the time said Civil Censorship Division was dissolved, Mrs. Knauff was decorated for faithful and satisfactory service. The Attorney General's findings therefore are contrary to the findings of another Government agency, and the question is raised whether this Court shall tolerate the situation in which one Government agency, the F.B.I., spies upon other Government agencies, the American Military Government in Germany, and does this outside of the jurisdiction of the United States where the F.B.I. has no business or standing. 123

It is furthermore submitted that the personnel of the Civil Censorship Division in Frankfort on the Main was made known to the public by mimeographed publications

124 similar to Exhibit 12 and that it was no military secret to show the names of the personnel of the Civil Censorship Division. While Mrs. Knauff denies that she gave information to the Czech government or any other government, it is respectfully argued that had she done so it would have been entirely proper.

It is furthermore submitted that the present Communist government in Czechoslovakia came to power in 1948; that in 1947 up to the time the Civil Censorship Division was dissolved, Czechoslovakia was our ally and that the relationship between this Government and the previous govern-
125 ment of Czechoslovakia was friendly and cooperative. The charges levied in the Attorney General's private letter against the Relator therefore make no sense and are quite obviously on the face thereof derived from evil and contaminated sources.

The Relator herein raises as a further point to sustain the writ of habeas corpus, the right under Section 312 of the Nationality Act to be admitted to United States citizenship. An application for a certificate of arrival and preliminary form for petition for naturalization on Form N 400 was submitted on or about the 23rd of November 1948. A copy of said petition is annexed hereto and marked Exhibit
126 14. Subsequent to the filing of said application for naturalization the undersigned attorney has been advised by counself for the Immigration Naturalization Service that this application will not be processed prior to Mrs. Knauff's admission to the United States. The petition for writ of habeas corpus herein is supplementarily based upon Mrs. Knauff's right pursuant to Section 312 of the Nationality Act of 1940 to file her petition for naturalization at once and an order is requested herein sustaining the writ of habeas corpus on the additional ground that she is entitled to immediate processing of her application for naturalization. An order is also requested herein directing the Dis-

trict Director of Naturalization to call Mrs. Knauff for an immediate hearing in which she may formally file her petition for naturalization.

The Court is finally advised that in the present habeas corpus proceedings not only the rights of the Relator for entry into the United States are the subject matter of discussion, but that Mr. Kurt Knauff, who signed the petition for habeas corpus as an honorably discharged veteran, has personal rights under public law 271. Mr. Knauff protests against the exclusion and detention of his wife. As an honorably discharged veteran of the United States Army during the Second World War, Mr. Knauff in recognition of his sacrifices for his country was given the privilege of living with his wife in the United States. It is for this reason that Public Law 271 curtailed the wartime police powers of the Government. Mr. Knauff personally asks that in any decision to be made herein his rights to the society of his wife should be considered and discussed, as distinguished from those of Mrs. Knauff personally.

No previous petition has been made for the relief herein demanded.

WHEREFORE it is respectfully prayed that this Court may grant the argument so that the petition urged in this affidavit may be spread before this Court.

GUNTHER JACOBSON.

(Verified on December 11th, 1948.)

Exhibit 11 Annexed to Affidavit of Gunther Jacobso

COPY OF SERVICE AND CERTIFICATE OF DISCHARGE FROM ROYAL AIR FORCE

(See opposite page ☛)

Statement of Facts To Be Used in Making and Filing My Petition for Naturalization

3

(1) My full, true, and correct name is ELLEN KNAUFF BOKHORNOVA RAPHAEL
(Full, true name without abbreviations, and any other name which has been used must appear here)

(2) My present place of residence is 114-20 133rd Street, (Number and street) South Ozone Park, (City or town) L.I., (County) N.Y.

(3) My occupation is government clerk (4) I am 53 years old

(5) I was born on JANUARY (Month) 1 (Day) 1905 (Year) in DORTMUND (City or town) GERMANY (Country)

(6) My personal description is as follows: Sex F; color WHITE; complexion FAIR; color of eyes GREY; color of hair BROWN; height 5 feet 1 1/2 inches; weight 110 pounds; visible distinctive marks NONE; race WHITE; present nationality STATELESS

(7) I am married; the name of my husband is KURT WALTER KNAUFF; we were married on FEBRUARY (Month) 28 (Day) 1928 (Year) at FRANKFORT (City or town) GERMANY (State or country); he was born at ALTLEBEN (City or town) GERMANY (Country) on DECEMBER (Month) 7 (Day) 1908 (Year); entered the United States at NEW YORK (City or town) - NY (State) on MARCH (Month) 17 (Day) 1939 (Year) for permanent residence in the United States and now resides at NEW YORK (City or town) - QUEENS (County) - NY (State) and was naturalized on APRIL (Month) 28 (Day) 1943 (Year) at COLUMBIA (City or town) S.C. (State) certificate No. 5488116; or became a citizen by

(8) I have NO children; and the name, sex, date and place of birth, and present place of residence of each of said children who is living are as follows:

(9) My last place of foreign residence was LONDON (City or town) ENGLAND (County, district, province, or state) (Country) (10) I emigrated to the United States from Frankfort (City or town) Germany (Country)

(11) My lawful entry for permanent residence in the United States was at Was never illegally detained at (City or town) under the name of Ellis Island, since my arrival on August (Month) 14 (Day) 1948 (Year) on the West Comfort (Name of vessel or other means of conveyance)

(12) Since my lawful entry for permanent residence I have not been absent from the United States, for a period or periods of 6 months or longer, as follows:

DEPARTED FROM THE UNITED STATES			RETURNED TO THE UNITED STATES		
Port	Date (Month, day, year)	Vessel or Other Means of Conveyance	Port	Date (Month, day, year)	Vessel or Other Means of Conveyance

(13) I declared my intention to become a citizen of the United States on no declaration on file (Month) (Day) (Year) in the New York (Name of Court) Court of at (City or Town) (State)

(14) I have resided continuously in the United States of America since August 14, 1948.

136 *Exhibit 11*

NOTES.

(*a*) Date of Mobilization, Embodiment or Recall from "Deferred" Service.

(*b*) Here insert R.A.F., R.A.F.V.R., A.A.F., W.A.A.F., or Class E. or F. Reserve, as applicable.

(*c*) "Cause of Discharge" should give precise words as applicable in K.R. & A.C.I., para. 652.

(*d*) "V.G." is the highest character which can be awarded
137 in the Royal Air Force.

(*e*) The trade proficiency headings A and B signify:—

TRADESMEN.

A. Skill in his trade (applicable to airmen up to the rank of corporal, inclusive).

B. Ability as technical warrant or non-commissioned officer, i.e., as foreman manager, foreman, or supervisor in his trade.

AIR CREW PERSONNEL.

138 A. Proficiency as pilot, navigator, air bomber, air gunner, etc.

B. Ability as a warrant or non-commissioned officer.

(*f*) The word "None" to be inserted where necessary.

(*g*) Should be a brief narrative statement in the form of a testimonial.

Exhibit 11

WARNING.

(To the airman/airwoman named on this Form.)

(i) You are hereby reminded that the unauthorized communication by you to another person at any time of any information you may have acquired whilst in His Majesty's Service which might be useful to an enemy in war renders you liable to prosecution under the Official Secrets Act.

(ii) Your discharge does not remove any liability you may still have to be called up for further national service or any such liability that may be placed upon you by future legislation.

(iii) You should on no account part with this certificate or forward it by post when applying for a situation, but should use a copy attested by a responsible person. If the certificate is lost it will be replaced only when its loss can be proved to have been due to very exceptional circumstances. Application for replacement should be made to the Air Officer-in-Charge of Records, Royal Air Force.

ANY PERSON finding this Certificate is requested to forward it in an unstamped envelope to the Under Secretary of State, Air Ministry, London, W.C.2.

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Exhibit 12 Annexed to Affidavit of Gunther Jacobson

GROUP "B" 7742 CIVIL CENSORSHIP DIVISION

EUROPEAN COMMAND

APO 757 US ARMY

11 July 1947

SPECIAL ORDERS }
NUMBER 19 }

1. Under the provisions of Paragraph 1 a. Section III, USFET, CPC No. 24, dated 21 February 1947, the EAME
143 (European-African-Middle Eastern) Theater Ribbon for faithful and satisfactory service is awarded to the following named employees of this Organization.

BAHRT, George
BERNARD, Sofie
BIRNHOLZ, Freda
BLAU, George
DIEDRICH, John E.
DOSSENBACH, Josette
GIMBLE, Warren
GREENSIDE, Max
HAFNER, Louis
144 HARMS, Ernest
HEYDLE, Kurt
IHRIG, Karl
LANDER, Alfred
MAYER, Sigfried
MULLER, Gerda
PLATE, Johannes
ROSSELAND, Dorothy
SCHRAN, Henry
VOLKHARDT, Horst
WEISE, Hennslore
THEYS, Henry
ULMANN, Mae
ZETSCHE, Pedro
ADLER, Betty
ADLER, Jakob
BACK, Lore
BARTER, Albert G.
BODLAENDER, Guenther
BODLAENDER, Ilse
BOXHORNOVA, Ellen
BRAKAS, Martin
DAHLIN, Alice
DORFNER, Henrietta
DROST, Ella
FEINER, Frieda
FRANKE, Gisela
GILBERT, Maurice
GOLDIN, Leonard
HELLER, Ernest
HERBERT, Maurice
HEUMANN, Hilda
HILTON, Herta
HILTON, Leslie
HOLZ, Edith

Isaac, Bruno
Jensen, Erik
Jorgensen, Vibeke
Kellermann, Wolfgang
Koplewicz, Getz
Larsson, Inge H.
Lehfeldt, Eva R.
Marle, Gertrud
Mautner, Stefan
Meier, Ruth L.
Monies, Lora
Morawetz, Ludwig
Moses, Emil
Muller, Erna
Munck, Eva
Neuhaus, Annelore
Neuhaus, Ingrid
Neumann, Fritz
Neumann, Maria
Neumann, Vilma
Nielsen, Mabel
Ostburg, Else
Pavel, Hans
Pechtur, Maria
Raschkowan, Alfred
Reich, Samuel
Reiss, Rudolph H.
Royce, Geoffrey
Sad er, Paula
Schiller, Lola
Schmidt, Anna M. L.
Siesel, Peter
Sittenfeld, Inge
Sommerfeld, Max
Spoegler, Lotte
Steinbach, Regina
Suss, Grete
Svendsen, Axsel
Unger, Cecilie
Voxsin, Gerard
Weber, Hubert
Weinstein, Moses
Wolfova, Charlotte
Zetsche, Krista

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By Order of Lieutenant Colonel Cushman: 147

Mark Winn
Mark Winn
1st Lt., CAC
Adjutant

148 **Exhibit 13 Annexed to Affidavit of Gunther Jacobson**

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
70 Columbus Avenue
New York 23, N. Y.

Please refer to this File Number
0300-255620
DEO

October 8, 1948

Mr. Kurt W. Knauff
114-20 – 133rd Street
149 South Ozone Park
Long Island, New York

Dear Sir:

Information was sent to this office to the effect that an order has been entered directing that Mrs. ELLEN KNAUFF be denied admission to the United States and that she be returned to the country whence she came.

Very truly yours,

W. J. ZUCKER
Acting District Director
150 New York District

By PAUL G. WERNER
Paul G. Werner
Assistant District Enforcement Officer

Exhibit 14 Annexed to Affidavit of Gunther Jacobson

COPY OF CERTIFICATE OF ARRIVAL AND PRELIMINARY FORM FOR PETITION FOR NATURALIZATION

(See opposite page ☛)

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Affidavit of Gunther Jacobson Amending Previous Affidavit in Support of Order to Show Cause

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE]

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

155 GUNTHER JACOBSON, being duly sworn, deposes and says:

I make this affidavit to amend my previous affidavit on which re-argument was granted.

The relator respectfully asks the Court to consider that the Passport Act of 1918, as amended in 1941, does not authorize the Immigration Service to dispense with a hearing. It merely authorizes them to impose additional grounds of exclusion. The exclusion of the relator therefore is in violation of the due process clause of the constitution of the United States.

156 The Passport Act of 1918 as amended in 1941, delegates legislative powers to the executive branch of the government.

It is urged that for this reason it is unconstitutional just as the NRA legislation was set aside by the Supreme Court thirteen (13) years ago on the ground of unconstitutional delegation of legislative powers.

The government is charged with arbitrarily excluding Mrs. Knauff from the United States. No hearing was held. There is a prima facie case of arbitrary and capricious action particularly in view of the excellent qualifications of Mrs. Knauff shown by the documents in evidence. Under the circumstances, the government, if it wants to justify

its action, should produce its files which it has refused to do. This shows that Mrs. Knauff's exclusion is in violation of due process.

Public Law 552, 80th Congress excludes aliens who are coming to this country for the purpose of engaging in activities that will endanger the public safety of the United States. The statute provides that an exclusion on this ground can only be had after a statutory hearing in which the exclusion issue is tried. It seems incongruous that an alien like Mrs. Knauff can be excluded without a hearing on the ground that her entry will be prejudicial to the best interests of the United States, where if she were entering to engage in activities that will endanger the safety of the United States she would be entitled to a statutory hearing pursuant to Public Law 552. It follows that Congress could not have wanted to delegate to the government the powers the government is trying to exercise under sections 175.52 to 175.57 CRF.

WHEREFORE, it is respectfully prayed to sustain the writ of habeas corpus herein upon re-argument.

GUNTHER JACOBSON.

(Verified on December 17th, 1948.)

Germany (Country)

(11) My lawful entry for permanent residence in the United States was at New York (City or town) finally obtained at under the name of Ellis Island, since my arrival on August 14 (Month) 1948 (Day) (Year)

on the U.S.A. Comfort (Name of vessel or other means of conveyance)

(12) Since my lawful entry for permanent residence I have not been absent from the United States, for a period or periods of 6 months or longer, as follows:

DEPARTED FROM THE UNITED STATES			RETURNED TO THE UNITED STATES		
Port	Date (Month, day, year)	Vessel or Other Means of Conveyance	Port	Date (Month, day, year)	Vessel or Other Means of Conveyance

(13) I declared my intention to become a citizen of the United States on 2nd declaration (Month) (Day) (Year) in the Eastern Dist. (Name of Court)

Court of at (City or Town)

(14) I have resided continuously in the United States of America since August (City or Town) 14, 1948 (State)

and continuously in the State of New York where I now live since August 14, 1948 (Month) (Day) (Year)

(15) I have not heretofore made petition for naturalization. Now (Month) (Day) (Year)

at (City or town) (County) (State) in the (Name of court), and such petition was dismissed or denied by that court for the following reasons and causes, to wit , and the cause of such dismissal or denial has since been cured or removed.

(16) I wish the naturalization court to change my name to —

(17) (1st witness) CARL ULRICH, STORE MANAGER

residing at 114-20 133rd (Name) Street, SOUTH OZONE PARK, L.I., N.Y. (Number and street) (State)

I first met this witness in the United States on September (Month) 19 (Day) 47 (Year)

(18) (2d witness) MRS. ANN RETTO, HOUSE WIFE

residing at 40-30 44th St., L.I. City, L.I., N.Y. (Number and street) (State)

I first met this witness in the United States on Sept. (Month) 19th (Day) 1948 (Year)

I CERTIFY that the above statement of facts has been read by or to me and that the statement is true to the best of my knowledge and belief.

Ellen Krasnoff (Name of applicant) 170 Grant Jackson 36 W 44th St., N.Y.C. (Address at which applicant receives mail)

DO NOT FILL IN BLANKS BELOW

Affidavit of witnesses to show residence of petitioner as follows:

United States

State

Examiner

DO NOT FILL IN BLANKS BELOW

Corrections numbered to in this Preliminary Form for Petition for Naturalization, N-400, were made by me or at my request.

Applicant

Date

10—11311-1

14/2

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Memorandum Opinion of Hulbert, J.

Motion of reargument granted and after such reargument the Court adheres to its former opinion. We cannot disregard the letters of the Attorney General of which relator now complains. They were apparently written in response to solicitations in her behalf and put into the case by her attorney. There is no right to citizenship until the petitioner is lawfully in the country and this Court does not feel authorized to disregard the order of the Attorney General but believes it was a lawful exercise of statutory power conferred upon him. The order to be entered will
161 contain a provision for a stay for a period to be agreed upon by counsel, and if such agreement can not be had the Court will determine and insert the day. Application for bail is denied so that within such period Relator may appeal and apply to the Circuit Court of Appeals for bail.

New York, December 27, 1948.

HULBERT,
U. S. D. J.

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Order Dismissing Writ of Habeas Corpus

163

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE]

The writ of habeas corpus in the above-entitled matter having come on to be heard on the 16th day of November, 1948, before this Court, and after hearing Gunther Jacobson, Esq., attorney for relator, in support of the writ, and John F. X. McGohey, United States Attorney for the 164
Southern District of New York (William J. Sexton, Assistant United States Attorney, of Counsel, in opposition thereto, and upon the petition for the writ of habeas corpus, the return thereto, and all the papers and proceedings had herein, and the Court having filed its opinion dated December 4, 1948, and a motion for reargument having been granted, and the motion for reargument having come on to be heard on the 20th day of December, 1948, and the Court having adhered to its former opinion by a memorandum decision filed on the 27th day of December, 1948, it is

ORDERED, that the writ of habeas corpus be dismissed, and it is 165

FURTHER ORDERED, that the relator be remanded to the custody of the Commissioner, Immigration and Naturalization Service, at Ellis Island, New York Harbor, New York, and it is

FURTHER ORDERED, that the relator's deportation be stayed until January 11, 1949, within which time relator is to file a notice of appeal and make whatever other application for a stay pending any appeal which relator may take herein.

Dated: New York, N. Y., January 3rd, 1949.

HULBERT,
U. S. D. J.

166

Notice of Appeal

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

Civ. 47-585

UNITED STATES OF AMERICA, *ex rel.* ELLEN KNAUFF,

Relator,

against

167

W. FRANK WATKINS, Ditsriet Director of Immigration and Naturalization Service,

Respondent.

Sir:

PLEASE TAKE NOTICE that the Relator herein appeals to the United States Court of Appeals for the Second Circuit from the final order herein, dated January 3, 1949, by which order the writ of habeas corpus was dismissed and the relator remanded to the custody of the Commissioner of Im-

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migration and Naturalization, and this appeal is from the whole of said order and from each and every part thereof.

Dated: New York, January 4, 1949.

Notice of Appeal 169

Yours, etc.,

GUNTHER JACOBSON,
Attorney for the Relator,
Office & P. O. Address,
36 West 44th Street,
New York 18, N. Y.

To:

1. JOHN F. X. MCGOHEY, Esq.,
U. S. Attorney for Respondent. 170

2. CLERK U. S. DISTRICT COURT,
Southern District, N. Y.

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Stipulation as to Correctness of Record

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA, *ex rel.* ELLEN KNAUFF,

Relator-Appellant,

against

173 W. FRANK WATKINS, District Director of Immigration and Naturalization Service,

Respondent-Appellee.

It is hereby stipulated and agreed, that the foregoing is a true copy of the transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

Dated, New York, January , 1949.

174 GUNTHER JACOBSON,
Attorney for Relator-Appellant.

JOHN F. X. McGOHEY,
U. S. Attorney,
Attorney for Respondent-Appellee.

175

Clerk's Certificate

UNITED STATES OF AMERICA, *ex rel.* ELLEN KNAUFF,
Relator-Appellant,

against

W. FRANK WATKINS, District Director of Immigration and Naturalization Service,
Respondent-Appellee.

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UNITED STATES OF AMERICA,
SOUTHERN DISTRICT OF NEW YORK, } ss.:

I, CHARLES J. H. FOLLMER, Clerk of the District Court of the United States of America for the Southern District of New York, do hereby certify that the foregoing is a correct transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

IN TESTIMONY WHEREOF, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York this day of , in the year of our Lord one thousand nine hundred and forty-nine and of the independence of the said United States the one hundred and seventy-third.

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William C. Connell
CHARLES J. H. FOLLMER,
Clerk.

(Seal)

[fol. 60] In United States Court of Appeals for the Second Circuit, October Term, 1948

No. 187

(Argued February 18, 1949. Decided March 11, 1949)

Docket No. 21254

United States of America, ex rel. Ellen Knauff, Relator-Appellant,

against

W. Frank Watkins, District Director of Immigration and Naturalization Service, Respondent-Appellee

Before Augustus N. Hand, Chase and Frank, Circuit Judges

Appeal from an order of the District Court for the Southern District of New York dismissing a writ of habeas corpus. Affirmed.

John F. X. McGohey, United States Attorney for the Southern District of New York; Attorney for Respondent-Appellee.

William J. Sexton, Assistant United States Attorney.

[fol. 61] Louis Steinberg, District Adjudications Officer, Immigration and Naturalization Service, United States Department of Justice.

Alvin Lieberman, Attorney, Immigration and Naturalization Service, United States Department of Justice, of Counsel.

Gunther Jacobson, Attorney for Relator.

Opinion

Chase, Circuit Judge:

The question which must be answered on this appeal is whether the wife of an American soldier who is a war bride within the purview of Public Law 271 of 1945, 59 Stat. 659, 8 U. S. C. A. § 232, may be denied admission to the United States without a hearing before a Board of Special Inquiry.

The relator-appellant is the lawful wife of Kurt W. Knauff who is a naturalized American citizen now employed in a civilian capacity by the American Army of Oc-

cupation in Germany. Mr. Knauff served as a soldier in the armed forces of the United States from November 21, 1942 until he was honorably discharged on January 17, 1946. He married the appellant in Germany on February 28, 1948 after having obtained consent so to do from the Office of the Advocate General of the United States Army at Frankfort-on-the-Main. The appellant, born on January 1, 1915, is a native of Germany who is now stateless and who served in England in the Royal Air Force as a flight sergeant from January 1, 1943 to May 30, 1946 and later was employed in Germany in the Civil Censorship Division and the Signal Division of the United States Army. Her official record in so far as appears is excellent.

[fol. 62] She obtained temporary leave from her employment in Germany in June 1948 to enter the United States to apply for naturalization as an American citizen under the provisions of Sec. 312 of the Nationality Act of 1940, 8 U. S. C. § 712, and arrived at the Port of New York on an American Army transport on August 14, 1948. After examination she was temporarily excluded by an immigration inspector. Thereafter she was denied further hearing and the exclusion order was made permanent by action of the Attorney General pursuant to the provisions of Sec. 175.57 (a) of Title 8 of the Code of Federal Regulations. She has since been detained at Ellis Island for return to Germany. The writ was issued on the application of her husband who came here for that purpose and who has since returned to Germany. It was dismissed after hearing and upon a rehearing the order of dismissal was left unchanged.

Sec. 223 of Title 22 U. S. C., 40 Stat. 559, as amended, 55 Stat. 252, provides that: "When the United States is at war or during the existence of the national emergency proclaimed by the President on May 27, 1941, or as to aliens whenever there exists a state of war between, or among, two or more states, and the President shall find that the interests of the United States require that restrictions and prohibitions in addition to those provided otherwise than by sections 223-226(b) of this title be imposed upon the departure of persons from and their entry into the United States, and shall make public proclamation thereof, it shall, until otherwise ordered by the President or Congress, be unlawful—

(a) For any alien to depart from or enter or attempt to depart from or enter the United States except under such

reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President shall prescribe; * * *"

[fol. 63] On November 14, 1941 the President did, by Proclamation No. 2523, impose restrictions and prohibitions in addition to those otherwise provided by law upon the departure of persons from and their entry into the United States which were to remain in force and effect until he otherwise ordered. This proclamation, insofar as now pertinent, provided that, "No alien shall be permitted to enter the United States if it appears to the satisfaction of the Secretary of State that such entry would be prejudicial to the interests of the United States as provided in the rules and regulations hereinbefore authorized to be prescribed by the Secretary of State, with the concurrence of the Attorney General."

Pursuant to the authority thus given them the officials just named did prescribe the rules and regulations which apply to the entry of the appellant and which are to be found in Title 8 of the Code of Federal Regulations Secs. 173.53 and 175.57. In Sec. 175.53 aliens who are excludable are classified in some detail and in Sec. 175.57 it is provided that, "(a) Any alien, even though in possession of a permit to enter, or exempted under §§ 175.41 to 175.63, inclusive, from obtaining a permit to enter, may be excluded temporarily if at the time he applies for admission at a port of entry it appears that he is or may be excludable under one of the categories set forth in § 173.53. The official excluding the alien shall immediately report the facts to the head of his department, who will communicate such report to the Secretary of State. Any alien so temporarily excluded by an official of the Department of Justice shall not be admitted and shall be excluded and deported unless the Attorney General, after consultation with the Secretary of State, is satisfied that the admission of the alien would not be prejudicial to the interests of the United States. Any alien so temporarily excluded by any other official shall not be admitted and shall be excluded [fol. 64] and deported unless the Secretary of State is satisfied that the admission of the alien would not be prejudicial to the interests of the United States.

(b) In the case of an alien temporarily excluded by an official of the Department of Justice on the ground that he is, or may be excludable under one or more of the cate-

gories set forth in § 175.53, no hearing by a board of special inquiry shall be held until after the case is reported to the Attorney General and such a hearing is directed by the Attorney General or his representative. In any special case the alien may be denied a hearing before a board of special inquiry and an appeal from the decision of that board if the Attorney General determines that he is excludable under one of the categories set forth in § 173.53 on the basis of information of a confidential nature, the disclosure of which would be prejudicial to the public interest."

It was as a result of following the procedure thus provided and the exercise of the authority thus given to the Attorney General that the appellant was excluded and ordered deported to Germany.

Passing for the moment any rights she or her husband may have under the so-called War Brides Act, *supra*, we hold that the action taken in respect to her was lawful. Sec. 223 of Title 22 U. S. C. together with the President's Proclamation pursuant thereto and the rules and regulations promulgated thereunder set up a basis, and the applicable procedure, for the exclusion of aliens in addition to that found in Secs. 136 and 137 of Title 8 U. S. C. and the procedure prescribed in Sec. 152 of that Title. It is not claimed, and the claim would clearly be untenable if made, that either Sec. 136 or 137 applies and neither does Sec. 152, either by statute or by the President's Proclamation, where, as here, the exclusion is "on the basis [fol. 65] of information of a confidential nature, the disclosure of which would be prejudicial to the public interest."

Thus it was provided that, as was done in this instance, an alien who sought entry to the United States could be temporarily excluded by any official of the Department of Justice and could not be admitted but must be excluded permanently and deported unless after the temporary action had been reported to the Secretary of State the Attorney General was satisfied that the admission of the alien would not be prejudicial to the interests of the United States. And the Attorney General could reach the conclusion that he was satisfied that the alien should be admitted only after he had consulted the Secretary of State. There is no requirement, however, that the Attorney General need consult the Secretary of State in the event that he is not satisfied that the alien may be admitted with-

out prejudice to the public interest. In this instance it does not appear whether the Attorney General did consult the Secretary of State and though the appellant raises that point it is of no consequence for the reasons just stated.

The appellant's other contentions to the effect that the basis of her exclusion and the procedure followed were unlawful are that Sec. 223 of Title 18 U..S. C. is too vague in its attempted delegation of legislative power; that the regulations do not conform to the President's Proclamation and that the regulations are themselves too vague. We find no merit in any of these objections.

The power of Congress to deny admission to aliens is absolute. *Fok Young Yo* v. *United States*, 185 U. S. 296; *Kaoru Yamataya* v. *Fisher*, 189 U. S. 86. Consequently there need be no such limitations upon the terms of delegation of that power as were held to be a constitutional prerequisite to the delegation of legislative power in *Schechter Corp.* v. *United States*, 295 U. S. 495. Further- [fol. 66] more, these regulations were within the wide sweep of delegation to executive discretion under the war power, as to which see *Hirabayashi* v. *United States*, 320 U. S. 81, and we are still at war with Germany. *Ludecke* v. *Watkins*, 335 U. S. 160.

The system which Congress set up and which has been followed in this instance comprises the promulgation for the guidance of subordinate officials of a series of classifications of excludable aliens to supplement the then existing laws. If subordinate officials are in doubt as to the admissibility of any alien under the supplemental regulations, such officials have the power to exclude temporarily and the duty to report that action for the attention of officials of cabinet rank who may make the exclusion permanent without a formal hearing, or any hearing before a board of special inquiry, provided the higher official charged with duty to decide does decide on the basis of confidential information that the alien is not admissible under the applicable law and regulations. The obvious purpose was to enable this country to be protected from the entry of aliens who were within the excludable categories without having to make public the proof of that status when in the judgment of responsible officials the disclosure of such information or the source of it would be detrimental to the public safety. Non-resident aliens have no interest which may not lawfully be dealt with in that way. *United States*

ex rel. Medeiros v. *Watkins*, 2 Cir., 166 F. 2d 897; *United States ex rel. Schlueter* v. *Watkins*, 2 Cir., 158 F. 2d 853.

That being so, the appellant has no grievance which can be remedied because some of the classifications in Sec. 175.53 may be so broadly stated as to be, as she says, vague. Some are very definite and explicit, but since discretionary action of the Attorney General was based on confidential information neither the appellant, nor we, can know the [fol. 67] excludable class into which that put her. A reading of Secs. 175.53 and 175.57 in the light of the authorizing statute and Presidential Proclamation leaves no doubt, however, that, insofar as they are explicit, they fall within the scope of the delegated power to promulgate rules and regulations which are reasonably drawn to accomplish the evident purpose of Congress. Regulations having been duly adopted, the burden is on one who questions them to show their invalidity. *Montana Eastern Limited* v. *United States*, 9 Cir., 95 F. 2d. 897. And this burden can be carried only by showing as a minimum that the regulations are inconsistent with the underlying statute or are unreasonable or inappropriate. *United States* v. *Morehead*, 243 U. S. 607; *Boske* v. *Comingore*, 177 U. S. 459. It has not been discharged by this appellant.

Nor do the reasons for exclusion stated by the Attorney General indicate affirmatively an arbitrary action on his part or an unreasonable basis for determining that appellant's entry would be prejudicial to the interests of the United States. The appellant, having failed to show affirmatively unfairness either in the regulations or in the action of the Attorney General, cannot complain merely of a lack of procedural due process. *United States ex rel. Schlueter* v. *Watkins*, *supra*.

Yet that is not enough to justify the order below dismissing the writ. The appellant insists that, even though the regulations are valid, her entry is not barred by them because she is entitled to enter as a matter of right under the so-called War Brides Statute, *supra*. That she is a person within the scope of that statute has been established and whether she is right or wrong in her demand for entry depends upon the proper construction of Sec. 1 of that act, 59 Stat. 659, 8 U. S. C. A. § 232. It reads so far as now pertinent as follows: "* * * notwithstanding the documentary requirements of any of the immigration laws or [fol. 68] regulations, Executive orders, or Presidential

proclamations issued thereunder, alien spouses * * * of United States citizens serving in, or having an honorable discharge certificate from the armed forces of the United States during the Second World War shall, if otherwise admissible under the immigration laws and if application for admission is made within three years of December 28, 1945, be admitted to the United States: * * *"

Sec. 5, 8 U. S. C. A. §236, of the act provides that, "For the purposes of this Act the Second World War shall be deemed to have commenced on December 7, 1941, and to have ceased upon the termination of hostilities as declared by the President or by a joint resolution of Congress." On December 31, 1946, the President by Proclamation No. 2714, while recognizing that a state of war still existed, did proclaim the cessation of hostilities of World War II effective on twelve o'clock noon on that day.

From this the argument of the appellant is in substance (1) that 22 U. S. C. Sec. 223 is not an immigration law and consequently neither it nor the regulations above discussed limit the scope of the War Brides Act; and (2) that as World War II ceased for the purposes of the War Brides Act on December 31, 1946 the powers delegated by 22 U. S. C. Sec. 223 were, in so far as the War Brides Statute is concerned, terminated on that date.

We cannot agree with either contention. Though Sec. 223 of Title 22 may properly enough be said not to be one of the statutes embraced within the concept of immigration laws in times of ordinary tranquility and is, as we have seen, a statute to supplement them as a war measure it nevertheless does deal with matters affecting immigration into this country and emigration therefrom and is, while it is effective, one of the immigration laws subject to which a war bride is made admissible under Sec. 232 of Title 8 U. S. C. See *Bonham* v. *Bouiss*, 9 Cir., 161 F. 2d 678.

[fol. 69] It was in effect when this appellant presented herself at the Port of New York for admission and still is. By its terms it was made effective not only when the United States is at war but also during the existence of the national emergency proclaimed by the president on May 27, 1941 and as to aliens when a third named condition was met. We need not rely upon more than the continued existence of the national emergency above mentioned. That alone makes the regulations under which the appellant was excluded still effective as to her though we do not mean to

imply that World War II does not still exist for that purpose also. We merely find no occasion for decision as to that.

Finally the appellant argues that she is in this country while being detained at Ellis Island and is entitled to apply for naturalization under the provisions of Section 312 of the Nationality Act of 1940 (8 U. S. C. Sec. 712). Without intimating that we agree that her presence on Ellis Island while being held there under an order of exclusion is enough to put her "in the United States" within the meaning of the above statute, we find it a sufficient answer to this contention to point out that whatever rights she may have under the naturalization laws do not exempt her from the scope of laws pertaining to the admission of aliens.

Affirmed.

[fol. 70] In United States Court of Appeals, Second Circuit

Present: Hon. Augustus N. Hand, Hon. Harrie B. Chase, Hon. Jerome N. Frank, Circuit Judges.

U. S. ex rel. Ellen Knauff, Relator-Appellant,

v.

W. Frank Watkins, District Director of Immigration, Respondent-Appellee

Appeal from the District Court of the United States for the Southern District of New York.

Judgment—Filed March 11, 1949

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the order of said District Court be and it hereby is affirmed.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

(S.) Alexander M. Bell, Clerk.

[fol. 71] [File endorsement omitted.]

[fol. 72] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 73] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 2, 1949

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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Supreme Court of the United States

October Term, ~~1948~~ 1949

No. ~~[redacted]~~ 54

UNITED STATES OF AMERICA, *EX REL.*
ELLEN KNAUFF,

Petitioner,

against

W. FRANK WATKINS, District Director of Immigration and Naturalization Service,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF

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Supreme Court of the United States

October Term, 1948

No.

UNITED STATES OF AMERICA, *ex rel.* ELLEN KNAUFF,

Petitioner,

against

W. FRANK WATKINS, District Director of Immigration and Naturalization Service,

Respondent.

PETITION FOR WRIT OF CERTIORARI

Proceedings and Opinions Below

Petitioner prays for a writ of certiorari to review the decree hereinafter described of the United States Court of Appeals for the Second Circuit, which decree was made and entered on March 11, 1949.

The petitioner applied for admission to the United States as a war bride (17),* but was excluded therefrom by order of the Attorney General (18). No reasons for such exclusion were stated when this decision was communicated to petitioner's husband on October 8, 1948 (Ex. 13, 148-150), nor had petitioner ever been granted an admission hearing before a board of special inquiry or any

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* All references are to folios unless otherwise indicated.

fact finding agency (25). Petitioner furthermore, although entitled to immediate naturalization pursuant to Section 312 of the Nationality Act of 1940 (8 U. S. C. 712), was denied access to the naturalization court.

The petitioner was thus denied any kind of administrative or legal procedure in which facts could have been ascertained, in which charges could have been made, and in which she could have offered evidence to contradict such charges. Therefore, her husband sought by writ of habeas corpus court review of petitioner's exclusion, on the ground that it was arbitrary and void of any element of due process. The writ of habeas corpus was allowed on October 9, 1948 (4-6). After argument and reargument, it was dismissed by an order dated January 3, 1949 (162-165) of the United States District Court for the Southern District of New York. Judge Hulbert wrote two opinions, the first one dated December 4, 1948 (82-105), the second one dated December 27, 1948 (160-161).

The Court of Appeals, upon petitioner's appeal, affirmed Judge Hulbert's order by decree dated March 11, 1949. None of the opinions below has as yet been reported.

The petitioner since her arrival in the United States has been held at Ellis Island. Her applications for her release *pendente lite* having been denied by both courts below.

Jurisdiction

The order of the Court of Appeals for the Second Circuit was made and entered on the 11th day of March, 1949. The jurisdiction of this court is invoked under Section 1254(1) of Title 28, U. S. C. and Section 5(b) of Rule 38 of the Revised Rules of this Court, as amended.

Statement of the Matter Involved

The main problem of the present case is whether a war bride, seeking admission to the United States under the favorable conditions set forth by the War Bride Act, (Public Law 271 of 1945, 8 U. S. C. A. 232, *infra*, p. 34) may be excluded from the United States without any kind of fact finding procedure, particularly without a hearing before a Board of Special Inquiry. Both courts below have decided that the Attorney General has the dictatorial powers, assumed by him in this case, to deprive an honorably discharged veteran of his wife, and that the Attorney General may do so without observing any element of due process. Against such adjudication the petitioner, and her husband who personally commenced this proceeding by signing the petition for a writ of habeas corpus, turn to this High Tribunal for redress of their grievances. A further problem of importance presented by this case is whether a person within the United States may be denied access to the Naturalization Courts by arbitrary action of the Immigration and Naturalization Service.

The petitioner, a woman of thirty-three years of age, of German-Jewish origin (110) applied on August 14, 1948, at the Port of New York for admission to the United

States as a war bride (17). On that day she was taken to Ellis Island where she was temporarily excluded from the United States. On October 6, 1948, the Attorney General ordered the petitioner finally excluded from the United States (18). No reason for such exclusion was stated when this decision was communicated to petitioner's husband on October 8, 1948 (Ex. 13, 148-150), nor was petitioner ever granted the statutory admission hearing before a board of special inquiry of the Immigration and Naturalization Service (25).

Petitioner, who is of Jewish origin, tried early to escape from Nazi prosecution. Soon after Hitler's ascent to power she went to Czechoslovakia, where she became married to a Czech with the name of Boxhornova. This marriage was no success and ended in a divorce. When Nazi Germany swallowed up Czechoslovakia in 1938-1939, petitioner continued her flight for safety and in 1939 found refuge in Great Britain (110).

Being grateful to Britain for her hospitality and desirous of fighting the Nazis, petitioner enlisted in the Royal Air Force where she served from January 1, 1943 to May 30, 1946. She was honorably discharged as a flight sergeant with the highest character rating awarded by the Royal Air Force (Ex. 11, p. 45).

Thereafter the petitioner was at once employed by the Occupation Forces in Germany (30) of the War Department of the United States. There the petitioner served first in the Civil Censorship Division until it was dissolved in the beginning of August, 1947 (111). Exhibit 12 (142-147) shows that after serving in said division for more

than a year (38), Ellen Boxhornova (143, right column) was awarded the European-African-Middle Eastern Theater Ribbon for faithful and satisfactory service. Exhibit 1 (37-39) is a letter of the Adjutant of the Civil Censorship Division of August 6, 1947, certifying petitioner's satisfactory conduct and efficiency rating of "Very Good". Exhibit 6 (61-63), Exhibit 5 (58-59), Exhibit 7, p. 23), Exhibit 10 (76-81) are further testimonials showing that the petitioner, up to the time she departed for the United States, rendered services to our Military Government in Frankfurt-on-the-Main that were recognized by her superiors as "excellent". Said testimonials describe petitioner as "discreet, capable and interested in her work". The decision below concludes from the record (61): "Her official record in so far as appears is excellent."

The petitioner on February 28, 1948, married Mr. Kurt W. Knauff. Mr. Knauff is a citizen of the United States and an honorably discharged veteran of our armed forces (9). Mr. Knauff's discharge papers (p. 5) show the battles and campaigns in Europe in which he participated and the medals he received. He is now serving our Military Government in Frankfurt-on-the-Main as a civilian employee (113).

Mr. Knauff married the petitioner with the consent of the Commanding General of the Frankfurt military post of the U. S. Army. Before this consent was given a thorough check was made by all service commands and intelligence agencies (31).

Being the wife of an honorably discharged veteran, the petitioner qualifies for the special benefits of the War Bride

Act (p. 34 *infra*). In the teeth of this statute she was excluded from the United States without any legal or administrative process. Being the wife of an employee of our government stationed abroad, the petitioner qualifies for immediate naturalization under Section 312 of the Nationality Act (p. 25 *infra*). Although her preliminary petition was duly filed with the District Director of Immigration and Naturalization, she was denied admission to the naturalization court by refusal to process her petition as provided by law.

Questions Presented

Respondent points to the provisions of Sections 175.53 to 175.57 of Title 8, Code of Federal Regulations in justification of petitioner's exclusion from the United States, without any legal process. The following questions are therefore presented in this case:

(1) Are the provisions of Sections 175.53 to 175.57 of Title 8, C. F. R., valid and in harmony with the Constitution and statutes of the United States? Are in particular said regulations in harmony with the Fifth Amendment to the Constitution, with the Passport Act of 1918 (22 U. S. C. 223), and the Proclamation of the President No. 2523? It is contended that with respect to said Passport Act, Presidential Proclamation and Regulations the provisions of the War Bride Act (8 U. S. C. 232-236) take precedent, which War Bride Act makes the admission of qualified war brides mandatory.

(2) Is the petitioner, being within the United States and being the wife of an employee of the Government of the

United States who is stationed abroad, entitled to access to a Naturalization Court pursuant to Section 312 of the Nationality Act of 1940 (8 U. S. C. 712)? May she under said Act offer proof of her good moral character and attachment to the principles of our Constitution, or may the respondent prevent such naturalization proceeding by arbitrarily refusing to process the petition for naturalization. The petitioner contends that respondent has no right so to exclude her from the naturalization courts.

The courts below have answered all these questions contrary to the contentions of the petitioner.

Reasons Why Certiorari Should be Granted

It is respectfully suggested that an honorably discharged veteran and his wife rate the interference of this High Tribunal, if the wife is excluded from admission to the United States by unmotivated executive fiat. While it has sometimes been stated that an immigrant approaching our shores cannot challenge the constitutionality of a statute or of a regulation issued thereunder, the original petitioner of this proceeding was the husband of the detained war bride. The War Bride Act was designed to give the honorably discharged veteran the privilege of bringing to this country his wife, if she shall be admissible under the general immigration laws. This admissibility of the wife is a privilege accorded the veteran by a grateful Congress, and it is respectfully contended that the veteran cannot be deprived of this privilege without due process of law!

The holdings of the courts below, contrary to the rule here enunciated, present constructions of the War Bride

Act and of the relation of said Act to the Fifth Amendment to the Constitution that ought to be settled. The holdings below further sanction a tyrannical exercise of administrative powers that is so shocking to the conscience of our freedom loving nation that this court should exercise its powers of supervision and once again intercede in protection of the individual against oppression.

The powers of the Attorney General under Section 175.57 also need authoritative interpretation, for a Florida District Court has construed said section in manner conflicting with the decisions below in the present case. While the decision of the Florida court is not a conflicting decision of another Court of Appeals, it shows the unsettled condition of some phase of our federal law that calls for the intercession of this Court.

WHEREFORE, it is respectfully prayed that a writ of certiorari issue to the U. S. Court of Appeals for the Second Circuit.

New York City, April 18, 1949.

Respectfully submitted,

GUNTHER JACOBSON,
Counsel for Petitioner.

Supreme Court of the United States

October Term, 1948

No.

UNITED STATES OF AMERICA, ex rel ELLEN KNAUFF,

Petitioner,

against

W. FRANK WATKINS, District Directors of Immigration and Naturalization Service,

Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

The petitioner has submitted a petition for a writ containing the prescribed statements of facts concerning the proceedings below and the merits of the case, and the conclusions of law why the writ should be granted.

This brief sets forth the legal argument, point by point, quoting and citing authority where necessary and mentioning additional facts appearing on the record where advantageous for continuous reasoning.

The language of those statutes and regulations that are not quoted in the text of the various points is annexed to the brief as Appendix I.

The assignment of errors appears from the captions of the following points:

POINT I

It was error on the part of the courts below to sanction the exclusion of a war bride from the United States by ukase of the Attorney General, without a hearing of any kind, without any fact finding procedure, without confronting her with charges or evidence of any kind, without permitting her the assistance of counsel.

A. The Due Process Clause of the Fifth Amendment to the Constitution protects the privileges under the War Bride Act of an honorably discharged veteran and his spouse.

Ellen Knauff, the petitioner herein, is the alien wife of an honorably discharged war veteran of our army. When she applied for admission to the United States as a war bride in August, 1948, she was whisked to Ellis Island. On October 8, 1948, Mrs. Knauff's husband, Mr. Kurt W. Knauff, was informed by Mr. Zucker, an employee of the Immigration and Naturalization Service, in a letter set forth at length on folios 148 to 150 of the record, as follows:

> Information was sent to this office to the effect that an order has been entered directing that Mrs. Ellen Knauff be denied admission to the United States and that she be returned to the country whence she came."

These are the entire proceedings administered to this war bride, which the courts below have sanctioned as legal, which are here claimed to be arbitrary, tyrannical and unconstitutional.

Mr. Kurt W. Knauff, husband of petitioner, personally came to this country to assist his wife. He instituted the

present proceedings. The writ of habeas corpus herein was issued upon Mr. Knauff's petition. It is emphasized that Mr. Knauff personally is seeking redress in this proceeding although his name does not appear in the title. This court, in disposing of this matter, is requested to consider Mr. Knauff a party to this petition as well as to all proceedings below.

The War Bride Act, Public Law 271 of 1945, provides that:

> "alien spouses * * * of United States citizens * * * having an honorable discharge certificate from the armed forces of the United States during the Second World War shall, if otherwise admissible under the immigration laws * * *, be admitted to the United States."

The language of the statute is clear and unambiguous. "Shall" be admitted means *Must!*

The petitioner, therefore, under Public Law 271, had to be admitted, unless inadmissible under the Immigration Laws.

The grounds for the exclusion of aliens are set forth in Section 3 of the Immigration Act of February 5, 1917, as amended,—8 U. S. C. 136, 137—and comprise anarchists, opposers of organized government, advocates of violence, publishers of subversive doctrines and similar elements. To these have been added by act of Congress of May 25, 1948, "aliens who the Attorney General knows or has reason to believe seek to enter the United States for the purpose of engaging in activities which will endanger the public safety of the United States" (Public Law 552, *infra*,

p. 36). This new law was obviously designed to exclude Fascists, Nazis, and Communists, and similar political agents, who come here for the purpose of spreading obnoxious doctrines. No such charges were made against the petitioner, and she therefore does not fall under any of the statutory exclusion grounds.

In order to justify petitioner's exclusion, the respondent stated that she was excluded by order of the Attorney General pursuant to Section 175.57 of Title 8 of the Code of Federal Regulations (*infra*, p. 51). Said section holds that an alien may be excluded from the United States by the Attorney General and the Secretary of State, and that no hearing by a board of special inquiry shall be held until after the case has been reported to the Attorney General and such hearing is directed by the Attorney General. Said section further holds that the Attorney General may deny the alien hearings if he determines that the alien is excludable under one of the categories set forth in Section 175.53 "on the basis of information of a confidential nature, the disclosure of which would be prejudicial to the public interest." The decision below, page 64, holds that petitioner was excluded and ordered deported to Germany as a result of the procedure provided in Section 175.57 and in exercise of the authority there given the Attorney General.

With this holding issue is taken here on the ground that Section 175.57, in giving the Attorney General power to exclude aliens without a hearing or any kind of process, is unconstitutional.

Amendment V of the Constitution provides:

> "No person shall * * * be deprived of life, liberty, or property, without due process of law."

These principles apply to immigration proceedings. The Supreme Court in *Yamataya* v. *Fisher*, 1903, 189 U. S. 86, 23 S. Ct. 611, 614 held with respect to immigration proceedings:

> "But this court has never held, nor must we now be understood as holding, that administrative officers, when executing the provisions of a statute involving the liberty of persons, may disregard the fundamental principles that inhere in 'due process of law' as understood at the time of the adoption of the Constitution. One of these principles is that no person shall be deprived of his liberty without opportunity, at some time, to be heard, before such officers, in respect of the matters upon which his liberty depends, * * * Therefore, it is not competent for * * * any executive officer * * * arbitrarily to cause an alien * * * to be taken into custody and deported without giving him all opportunity to be heard upon the questions invading his right to be and remain in the United States. No arbitrary power can exist where the principles involved in due process of law are recognized."

Inasmuch as relator's right to enter and her husband's right to have her admitted (127, 128) under the War Bride Act were determined in this case without the statutory hearing, without any hearing at all, after denial of counsel and access to the courts, without any notice to the alien of the charges that were made against her and without the offer of any evidence against her (17, 18, 25), the proceedings of the Attorney General are void and of no effect.

Occasionally court decisions have held that aliens not yet admitted to the United States have no standing in our courts to challenge the constitutionality of Acts of Congress. To this we reply that we attack no act of Congress but a departmental regulation, furthermore that one of the petitioners in this proceeding is Mr. Kurt W. Knauff, husband of the alien, a citizen of the United States. Together with his wife, the petitioner, Mr. Knauff is a party here in pressing the challenge of the constitutionality of 8 C. F. 175.57. As a citizen and a veteran he appears entitled to raise the constitutional question.

The War Bride Act of Dec. 28, 1945, was a part of that legislation that Congress enacted to show the returning soldiers the appreciation of a grateful nation. In the interpretation of the Act it should be considered that petitioner's exclusion is a blow not only to herself but to her husband whose discharge certificate (p. 5 of record) is "a testimonial of Honest and Faithful Service to this country." Mr. Knauff has participated to the full in this proceeding. He was the one who signed the petition for Habeas Corpus (7 to 12). Mr. Knauff, by the act of the Attorney General, is being deprived of his wife. He is being deprived of his wife without due process of law, without any process of law, by administrative fiat. Mr. Knauff has a right to insist that his wife's admissibility be determined in a proceeding bearing the characteristics of due process.

Mr. Knauff now turns to this High Tribunal and clamors for its writ of certiorari so that it may be determined whether the Attorney General may place an honorably discharged veteran of World War II before the awful choice between his country and his wife; whether the Attorney

General may do so without any process of law, on the basis of secret information, that petitioner has alleged to be spurious, mendacious and based upon a foul denunciation (11, 32).

Mr. and Mrs. Knauff, both as the record shows honorably discharged veterans of the last war, both faced with the brutal and unjustified annihilation of their lives, respectfully pray every justice of this court to yield to their importunities and issue a writ of certiorari because of the magnitude of the injustice done to them, for the sake of their services to the Allied Cause in the last war, for the sake of the passion for justice of this law loving nation.

B. Even if the war bride seeking admission should not be entitled to constitutional due process, she is entitled to statutory due process.

The proceedings concerning the exclusion of aliens to the United States are statutory. The basic provisions are contained in 8 U. S. C. 152, reading:

> "Every alien who may not appear to the examining immigrant inspector at the port of arrival to be clearly and beyond a doubt entitled to land shall be detained for examination in relation thereto by a board of special inquiry. In the event of rejection by a board of special inquiry, in all cases where an appeal to the Attorney General is permitted by this chapter, the alien shall be so informed and shall have the right to be represented by counsel or other adviser on such appeal."

Reference is further made to 8 U. S. C. 153, from which the following language is quoted:

> "Such boards shall have authority to determine whether an alien who has been duly held shall be

allowed to land or shall be deported. All hearings before such boards shall be separate and apart from the public, but the immigrant may have one friend or relative present under such regulations as may be prescribed by the Attorney General. Such boards shall keep a complete permanent record of their proceedings and of all such testimony as may be produced before them; and the decisions of any two members of the board shall prevail, but either the alien or any dissenting member of the said board may appeal through the district director of immigration and naturalization at the port of arrival and the Commissioner of Immigration and Naturalization to the Attorney General, and the taking of such appeal shall operate to stay any action in regard to the final disposal of any alien whose case is so appealed until the receipt by the district director of immigration and naturalization at the port of arrival of such decision which shall be rendered solely upon the evidence adduced before the board of special inquiry. In every case where an alien is excluded from admission in the United States, under any law or treaty now existing or hereafter made, the decision of a board of special inquiry adverse to the admission of such alien shall be final, unless reversed on appeal to the Attorney General."

In the present case, the statutory manner of proceeding was entirely disregarded. The relator was not placed before a board of special inquiry; she was refused a lawyer and access to the courts; she was secretly examined by an official and finally advised that she was excluded from the United States (25). No exclusion grounds were officially stated (Ex. 13, 148-150).

The judges below find a justification for the relator's exclusion and for the proceedings administered to her in sections 175.53 to 175.57 of Title 8, C. F. R., which are set forth *infra*, pp. 47 to 52.

These regulations need careful analysis.

Section 175.53 sets forth the classes of aliens whose entry shall be deemed prejudicial to the United States. Subsection (a) terms prejudicial the entry of aliens who belong to one of the classes specified in the act of October 16, 1918, as amended. This act is identical with section 137 of Title 8, U. S. C. It excludes anarchists, members of subversive organizations, and other similar categories which were discussed on pages 11 and 12 of this brief. It appears, from the record that the classes specified in section 175.53 (a), Title 8, C. F. R., do not apply to this petitioner.

Similarly, subsections (b), (c), (d), (e), (f), and (g), of section 175.53 do quite obviously not apply. Neither does subsection (h) apply. It refers to 22 U. S. C. Sup. 228 and 229, which sections authorize the consular officers to refuse visas to aliens who seek to enter the United States for the purpose of engaging in activities which will endanger the public safety of the United States. As this section is addressed to consular officers, it gives no powers of exclusion to the Attorney General and it was for the purpose of closing this gap that Congress enacted Public Law 552 of 1948 (*infra*, p. 36). The legislative history of Public Law 552, printed in full below (pp. 37-39), shows that Congress had in mind filling this gap. The letter of Mr. McGregor, Assistant to the Attorney General, to Representative Michener, of June 20, 1947, *infra*, pp. 38-39, therefore expressly states:

> "However, if an alien succeeds in concealing such purpose from the diplomatic or consular officer, and obtains a visa or other travel document, he cannot legally be denied admission on the ground of his purpose after he reaches the United States."

It is therefore proved that the relator cannot have been excluded by the Attorney General under subsection (h) of section 175.53 which refers to a power not vested in the Attorney General. If this relator on the other hand was sought to be excluded under Public Law 552, she had a right to a trial before a Board of Special Inquiry, which trial was denied her.

Subsection (i) refers to alien enemies. We need not go into this section further, for it has not been invoked against the relator. It might also be mentioned that, the alien enemy act of 1798 is not an "Immigration Law". An alien spouse of German nativity must quite obviously be admitted under the War Bride Act which expressly holds that war brides may solely be excluded on the exclusion grounds of the "Immigration Laws".

Subsection (j) is not applicable.

Subsection (k) is a catch-all clause which is invoked by the government in this case. It reads:

> "(k) Any alien who is not within one or more of the classes defined in paragraphs (a) to (j), inclusive, but in whose case circumstances of a similar character may be found to exist, which render the alien's admission prejudicial to the interests of the United States, which it was the purpose of the act of June 21, 1941 (55 Stat. 252; 22 U. S. C., Sup. 223) to safeguard."

It is submitted that this clause is so vague, ambiguous, and void of precise meaning, that it cannot be considered valid. If valid it would authorize the Government to do what it pleases and set aside the statutory admission proceeding at pleasure.

That vague, ambiguous and indefinite statutes are void has always been held by our courts. Reference is made to decisions like *A. B. Small Co.* v. *Amer. Sugar Refining Co.*, 1925, 267 U. S. 233, 45 S. Ct. 295, where an act prohibiting the exaction of unreasonable prices for necessaries was held void because indefinite, whether taken as a civil regulation or as a criminal statute. It is entirely impossible to define who an alien is who is not in the classes (a) to (j) "but in whose case circumstances of a similar character may be found to exist." The requirements of definiteness established by the courts with reference to statutes must, *a fortiori*, be applied with increased strictness to the Rules and regulations of administrative agencies.

In the present case we noticed that Congress in 8 U. S. C. 137 has defined with definiteness the classes of aliens excludable for political reasons. Section 175.53 (k) now adds a new class of excludable persons. Acting new classes of excludable persons is in itself beyond administrative powers.

This new class of excludable aliens is in addition improperly, i.e. too vaguely, defined, and so comprehensive that it makes 8 U. S. C. 137 illusory.

Summing up the previous argument, the conclusion is reached that the relator falls under none of the classes of aliens whose entry pursuant to Section 175.53 shall be

deemed prejudicial to the United States on the grounds that sections (a) to (j) do not apply and that section (k) is without meaning and beyond statutory power.

Sections 175.54 to 175.56 are not applicable.

Section 175.57 (a) is invoked by the court below as the basis for the proceeding applied to the exclusion of this alien. This section (*infra*, p. 51) purports to authorize the temporary exclusion of any alien if "it appears that he is or may be excludable under any of the categories set forth in section 175.53". Such alien, the section further provides, "shall be excluded and deported unless the Secretary of State is satisfied that the admission of the alien would not be prejudicial to the interests of the United States."

In the present case, the Secretary of State was not consulted. The government return expressly states (18):

> "2. On October 6, 1948, the Assistant Commissioner of Immigration and Naturalization recommended that the relator's temporary exclusion be made permanent without the right of a hearing before a Board of Special Inquiry under the provisions of 8 C. F. R. 175.57. On the same day, this recommendation was adopted by the Attorney General, who ordered relator excluded from the United States."

It appears that the Attorney General acted on his own, acted beyond the powers that his own rules purported to give him. On this reasoning alone the exclusion order herein must fall.

That under Rule 175.57 (a) —if indeed it shall not be invalid for indefiniteness—the Secretary of State and not the Attorney General must exclude the alien, has been held in a recent decision of Judge Holland of the U. S. District Court for Florida, in a matter of Visic (Nov. 1948). This decision is annexed hereto, pp. 53-56, below, as part of Appendix II.

Section 175.57 (b) purports to give the Attorney General power to deny the alien a hearing by a board of special inquiry and an appeal therefrom "if the Attorney General determines that he is excludable under one of the categories set forth in section 153.53 on the basis of information of a confidential nature, the disclosure of which would be prejudicial to the public interest."

This section has been violated in several ways. First, as shown before, relator is not being excluded under, and does not belong to any, of the classes set forth in section 175.53. Secondly, there is no determination by the Attorney General that the relator is excludable on confidential information, the disclosure of which would be contrary to the public interest. Inasmuch as the Attorney General wrote about this matter to his friend "Joe" (70-75), it would seem that he did not deem the matter confidential. Thirdly, there is no statutory basis for section 175.57, which is the arbitrary and unauthorized product of government officials desirous of legislating.

The conclusion is that there is no basis for the proceeding adopted herein by the government, that the by-passing of the boards of special inquiry was unauthorized, and that the writ herein should have been sustained because the procedure prescribed by law to determine the alien's admissibility was not followed.

C. 8 C. F. R. 175.53 to 175.57 do not apply to war brides and are unauthorized by statute.

The courts below held that sections 175.53 to 175.57, Title 8, C. F. R. are authorized by 22 U. S. C. 223 and Presidential Proclamation 2523. It is submitted that the learned judges are in error. 22 U. S. C. 223, set forth verbatim *infra* p. 33, is the so-called Passport Act of 1918, as amended. It applies, as its language shows, to times of war. Relator argues that, as far as she is concerned, the war is at an end. Reference is made to that part of the War Bride Act which says that

> "For the purpose of this Act, the Second World War shall be deemed * * * to have ceased upon the termination of hostilities as declared by the President * * *".

The President declared the termination of hostilities by proclamation 2714 on December 31, 1946 (*infra*, p. 46). From this fact it is deduced that with respect to war brides no war powers can be invoked by the government. No war bride, since Dec. 31, 1946, can be excluded under powers flowing from the Passport Act of 1918.

Furthermore, 22 U. S. C. 223 (a) authorize the President to prescribe "reasonable rules and regulations." It does not authorize the government to invent additional exclusion grounds. Inasmuch as 8 C F. R. 175.53 (k) and 8 C. F. R. 175.57 establish new grounds for exclusion, they are void. The Attorney General, as he purported to do, had no power to make excludable such aliens "in whose case circumstances of a similar character may be found" (175.53 (k)) and his attempt to act in this case under this provision is contrary to statute, not authorized by 22 U. S. C. 223.

Section 175.57 therefore is no "reasonable" rule or regulation. It does not carry the statute into effect; it is an attempt to legislate.

The Attorney General was not authorized by 22 U. S. C. 223 (a) to abolish the statutory boards of special inquiry. He was given no power to supersede the Immigration Laws.

The President under 22 U. S. C. 223 (a) issued Proclamation 2523 (*infra*, p. 40). Said proclamation under (3), second paragraph states (*infra*, p. 43):

> "No alien shall be permitted to enter the United States if it appears to the satisfaction of the Secretary of State that such entry would be prejudicial to the interests of the United States as provided in the rules and regulations hereinbefore authorized to be prescribed by the Secretary of State, with the concurrence of the Attorney General."

It is apparent that the President gave the power to exclude under said proclamation to the Secretary of State and not to the Attorney General and that the Attorney General's acts in this matter are not authorized by said Proclamation. If the government desires to argue that 8 C.F.R. 175.53—175.57 were promulgated by the Secretary of State and the Attorney General jointly, the answer is that the Secretary of State has no power to delegate his powers to the head of another government agency, and that in fact section 175.57 (a) did not delegate the power to exclude to the Attorney General, but retained it with the Secretary of State. Judge Holland in the Visic decision came to the same conclusion (*infra*, pp. 53-56).

t has been pointed out above that section 5 of the War Bride Act, *infra*, p. 35, provides that for the purposes of this act the second world war has been terminated with the presidential proclamation of cessation of hostilities, on Dec. 31, 1946. From this it is deduced that 22 U. S. C. 223 cannot be applicable to a war bride, for section 223 expressly holds that the powers therein defined are granted solely

(1) When the United States is at war;

(2) During the existence of the emergency proclaimed by the President on May 27, 1941;

(3) Whenever there exists a state of war between two or more states.

The War Bride Act shows that as to war brides and their right to enter we are to be deemed at peace. The emergency proclaimed by the President on May 27, 1941, was terminated and replaced by the outbreak of the second world war. There is no war between two or more states in existence. For this reason again 22 U. S. C. 223 cannot be applicable to this case.

The courts below rejected this argument on the ground that this Court held in *Ludecke* v. *Watkins*, 1948, 335 U. S. 160, that we are still at war with Germany. It is submitted that the *Ludecke* case is not applicable to the present situation, as Ludecke was not a war bride and the construction of the War Bride Act was not attempted in that case.

Petitioner Ellen Knauff should therefore have been given the statutory admission hearing under section 8, U. S. C. 152 and 153.

POINT II

It was error on the part of the courts below to sanction the petitioner's exclusion from the Naturalization Court.

One of the independent grounds on which the writ of habeas corpus in this case was sought to be sustained was that relator filed her preliminary form for petition for naturalization on November 23, 1948 (125, and Ex. 14, p. 51), but that respondent failed and refused to process the same and denied her admission to the naturalization court (126).

The courts below disposed of this issue by deciding that there is no right to citizenship until the petitioner is lawfully in the country (160). The courts below therefore denied petitioner's demand to direct the respondent to call the relator for an immediate hearing in which she may formally file the petition (127).

It is submitted that the learned judges are in error.

The legal basis of petitioner's demand is section 312 of the Nationality Act of 1940 (8 U. S. C. 712) reading:

> "An alien, whose spouse is (1) a citizen of the United States, (2) in the employment of the Government of the United States, or of an American institution of research recognized as such by the Attorney General, or an American firm or corporation engaged in whole or in part in the development of foreign trade and commerce of the United States, or a subsidiary thereof, and (3) regularly stationed abroad in such employment, and who is (1) in the United States at the time of naturalization, and

(2) declares before the naturalization court in good faith an intention to take up residence within the United States immediately upon the termination of such employment abroad of the citizen spouse, may be naturalized upon compliance with all requirements of the naturalization laws, with the following exceptions:

(a) No declaration of intention shall be required; and

(b) No prior residence within the United States or within the jurisdiction of the naturalization court or proof thereof shall be required. Oct. 14, 1940, c. 876, Title I, Subchap. III, Sect. 312, 54 Stat. 1145."

It is apparent on the face of this section 312 that relator qualifies for immediate naturalization. Her husband is in the employ of the U. S. government abroad. Judge Hulbert so found as a fact (88, 89). Relator is in the United States, she desires to declare her intention to take up residence. All requirements of the statute are met; there is no reason discernible why relator should be refused her day in court on her naturalization petition.

The naturalization procedure is set forth in the Nationality Act of 1940.

Sec. 301 (8 U. S. C. 701) provides:

"(a) Exclusive jurisdiction to naturalize persons as citizens of the United States is hereby conferred upon the following specified courts: District Courts of the United States * * * The jurisdiction of all the courts herein specified to naturalize persons shall extend only to such persons resident within the respective jurisdictions, except as otherwise specifically provided in this Act.

* * *

(d) A person may be naturalized as a citizen of the United States in the manner and under the conditions prescribed in this Act, and not otherwise."

It should be pointed out at this time that the second sentence of section 301 (a) is not in the way of relator's petition, for section 312 (*supra*, p. 25) expressly provides that "(b) no prior residence within the United States or within the jurisdiction of the naturalization court or proof thereof shall be required." That relator does not reside within the jurisdiction of the District Court for the Southern District of New York is therefore no reason not to process the petition or to deny it.

Sec. 307 (a) Nat. Act (8 U. S. C. 707a) provides:

"(a) No person, except as hereinafter provided in this Act, shall be naturalized unless such petitioner, (1) immediately preceding the date of filing petition for naturalization has resided continuously within the United States for at least five years and within the State in which the petitioner resided at the time of filing the petition for at least six months, (2) has resided continuously within the United States from the date of the petition up to the time of admission to citizenship, and (3) during all the periods referred to in this subsection has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States. (54 Stat. 1142; 8 U. S. C. 707.)"

These requirements again are dispensed with for alien spouses of citizens employed by our government and stationed abroad, as section 312 shows.

The Procedure to be followed in naturalization matters is set forth in sections 327 ss of the Nationality Act.

The preliminary examination of the applicant is in the hands of the Commissioner of Immigration. Section 327 (b) of the Nationality Act (8 U. S. C. 727 (b)) provides:

> "(b) The Commissioner, with the approval of the Attorney General, shall make such rules and regulations as may be necessary to carry into effect the provisions of this chapter and is authorized to prescribe the scope and nature of the examination of petitioners for naturalization as to their admissibility to citizenship for the purpose of making appropriate recommendations to the naturalization courts. Such examination shall be limited to inquiry concerning the applicant's residence, good moral character, understanding of and attachment to the fundamental principles of the Constitution of the United States, and other qualifications to become a naturalized citizen as required by law, and shall be uniform throughout the United States. (54 Stat. 1151; 8 U. S. C. 727.)"

With respect to this provision it should be mentioned that such rules were made by the Commissioner. They are contained in sections 363.1 to 363.4, Title 8, C. F. R. Sections 363.3 and 363.4 of said rules provide:

> "363.3. Certificate of arrival to be filed with petition for naturalization. Each petitioner for naturalization who entered the United States after June 29, 1906, shall, unless specifically exempted by the Nationality Act of 1940 from the requirement of a certificate of arrival, file with his petition for naturalization a certificate of arrival issued in accordance with § 363.1. Such certificate of arrival shall be filed

with the petition for naturalization at the time the petition is filed. The certificate of arrival issued to support a declaration of intention in accordance with §363.2, may be used in support of the petition for naturalization. (Nationality Act of 1940, sec. 332 (c), 54 Stat. 1156)"

"363.4. Petitioners who are exempt from requirement of certificate of arrival. The following persons may file petitions for naturalization without the issuance of a certificate of arrival: (a) persons who entered the United States for permanent residence on or prior to June 29, 1906; and (b) petitioners under sections 317 (a) (b) (c), 318, 322, 323, 324, and 325 of the Nationality Act of 1940. (Nationality Act of 1940, secs. 317 (a) (b) (c), 318, 322, 323, 324, 325 and 332 (c), 54 Stat. 1146, 1147, 1148-1150, 1156)"

It is quite obviously on the basis of these rules, why respondent refused to process the present petition, for relator is not exempted by said rules from the procurement of a certificate of arrival, section 312 of the Nationality Act not being mentioned in section 363.4 of 8 C. F. R.

It is submitted that while this regulation explains why respondent refuses to process petitioner's application for citizenship, this refusal is not made legal thereby. The regulation is not in harmony with the statute and therefore is without legal authority under section 727 (b) which expressly provides that such regulations shall be made "as may be necessary to carry into effect the provisions of this chapter." The regulation, in leaving out section 312 in 8 C. F. R. 363.4, does not carry the statute into effect.

For the reason set forth the petitioner is entitled to her day in court and the respondent should be directed to process the petition so that the case may be calendared

and petitioner bring proof of her good moral character, loyalty and attachment to our institutions. Where the Immigration Service arbitrarily refuses to bring a petition for naturalization before the court, the court has power to order it to do so:

> *Czuczka* v. *Rifkind*, 1947, 160 F. (2d) 308;
> See also Sections 333 and 334 Nationality Act (733, 734 of 8 U. S. C.).

The question here raised, whether lawful entry is a prerequisite of applying for citizenship pursuant to section 312 Nationality Act, has never been decided by the courts. It ought to be mentioned however that an opinion exists which bears the name of the present Justice of the Supreme Court, the Honorable Robert H. Jackson, who rendered said opinion when he was Attorney General. This opinion is reprinted *infra*, pp. 57-59. The court will notice that it comes to a conclusion opposite to the one here reached and is in harmony with the decisions below.

Despite the great respect which the opinion of so eminent a jurist as Mr. Justice Jackson commands, it should be pointed out that he did not have the benefit of argument of counsel when writing his opinion and that he was in the position, as Attorney General, that the Department of Justice had already taken a stand on that point in controversy by promulgating C. F. R. 363.4 which was discussed above. The Department of Justice, of course, had a tendency to justify the position previously taken. A final determination of the problem can only be made by this court.

The main point in the Attorney General's reasoning is that section 332 sets forth in general as a requirement for naturalization "proof of legal entry in the United States for permanent residence." It seems necessary to take issue

with this premise. Section 332 of the Nationality Act sets forth a sample of a petition for naturalization, together with the direction that the "petition shall contain *substantially* the following averments by such applicant". The point is here made that the list of items the petition must contain is that of a normal naturalization case. Item 14, *e. g.*, contains the statement that the applicant declared his intention to become a citizen of the United States on a cerain date. Since section 312 Nationality Act exempts the relator herein from the requirement of "first papers", they are not necessary in her case, and similarly, item 11, referring to "lawful entry for permanent residence" is not applicable, because section 312 merely demands a declaration of the applicant that she intends "to take up residence within the United States immediately upon the termination of such employment abroad of the citizen spouse." Section 312 expressly holds therefore that the applicant thereunder is *not* expected to take up permanent residence. Item 11 of section 332 is thereby expressly dropped for applicant under section 312.

Mr. Attorney General Jackson further argues that "the other exemption in section 312 being expressly granted," it is his opinion that an exemption from lawful entry should not be read into the act by implication.

The answer to this is that section 312, not by implication, but by most pertinent direct language exempts the alien spouse from the requirement of legal entry by requiring only that she "is (1) in the United States at the time of the naturalization." There is no doubt that relator "is in the United States". Said section further holds "no prior residence within the United States * * * or proof thereof shall be required." If now a certificate of legal

entry for permanent residence is required, proof is required of previous residence, which the statute expressly rules out. If no prior residence is required at the time of the application, it can only mean that applicant need not be a resident at the time of the application and that all that is necessary is that, somehow, she is actually in the United States. Relator meets this requirement.

Another point must be made in this connection. This court, in deciding this case, will not have to determine whether or not the relator is entitled to naturalization with or without proof of legal entry. This is an issue to be determined by the naturalization court. Even if respondent feels that relator is not entitled to naturalization without such certificate, respondent has no right to decide this question of law. Respondent still has to process the case and to put it down for filing of the petition. Respondent may then submit his objections to the naturalization court for determination. It is an unlawful arrogation of power on the part of respondent, to withhold this application from the court, and respondent should be directed to proceed in the matter and to afford relator an opportunity to file and complete her petition for naturalization and the writ of habeas corpus herein should have been sustained for such purpose.

CONCLUSION

A writ of certiorari to the United States Court of Appeals for the Second Circuit should issue.

April 19, 1949.

Respectfully submitted,

GUNTHER JACOBSON,
Attorney for Relator.

APPENDIX I

Statutes and Regulations

(Shorter citations of other statutes are set forth verbatim at the proper place in the points below.)

Passport Act of 1918 as amended in 1941, Title 22, U. S. C., section 223:

> "§ 223. *War-time restrictions generally.* When the United States is at war or during the existence of the national emergency proclaimed by the President on May 27, 1941, or as to aliens whenever there exists a state of war between, or among, two or more states, and the President shall find that the interests of the United States require that restrictions and prohibitions in addition to those provided otherwise than by sections 223-226 of this title be imposed upon the departure of persons from and their entry into the United States, and shall make public proclamation thereof, it shall, until otherwise ordered by the President or Congress, be unlawful (as amended June 21, 1941, c. 210, § 1, 55 Stat. 252).
>
> "(a) For any alien to depart from or enter or attempt to depart from or enter the United States except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President shall prescribe;"
>
> • • •

Aliens-Spouses and Minor Children of Citizens in Armed Forces

CHAPTER 591—PUBLIC LAW 271

[H. R. 4857]

An Act to expedite the admission to the United States of alien spouses and alien minor children of citizen members of the United States armed forces.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

Notwithstanding any of the several clauses of section 3 of the Act of February 5, 1917, excluding physically and mentally defective aliens, and notwithstanding the documentary requirements of any of the immigration laws or regulations, Executive orders, or Presidential proclamations issued thereunder, alien spouses or alien children of United States citizens serving in, or having an honorable discharge certificate from the armed forces of the United States during the Second World War shall, if otherwise admissible under the immigration laws and if application for admission is made within three years of the effective date of this act, be admitted to the United States: Provided, That every alien of the foregoing description shall be medically examined at the time of arrival in accordance with the provisions of section 16 of the Act of February 5, 1917, and if suffering from any disability which would be the basis for a ground of exclusion except for the provision of this

Act, the Immigration and Naturalization Service shall forthwith notify the appropriate public medical officer of the local community to which the alien is destined: PROVIDED FURTHER, That the provisions of this Act shall not affect the duties of the United States Public Health Service so far as they relate to quarantinable diseases.

Sec. 2. Regardless of section 9 of the Immigration Act of 1924, any alien admitted under section 1 of this Act shall be deemed to be a nonquota immigrant as defined in section 4 (a) of the Immigration Act of 1924.

Sec. 3. Any alien admitted under section 1 of this Act who at any time returns to the United States after a temporary absence abroad shall not be excluded because of disability or disabilities that existed at the time of his admission.

Sec. 4. No fine or penalty shall be imposed under the Act of February 5, 1917, except those arising under section 14, because of the transportation to the United States of any alien admitted under this Act.

Sec. 5. For the purpose of this Act, the Second World War shall be deemed to have commenced on December 7, 1941, and to have ceased upon the termination of hostilities as declared by the President or by a joint resolution of Congress.

Approved December 28, 1945.

CHAPTER 338—PUBLIC LAW 552 OF 1948
[1878]

An Act to amend the immigration laws to deny admission to the United States of aliens who may be coming here for the purpose of engaging in activities which will endanger the public safety of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

Section 1 (a) of the Act of October 16, 1918, as amended (40 Stat. 1012; 41 Stat. 1008-9; 54 Stat. 673; 8 U. S. C., 137), is further amended by inserting the following clause immediately after the clause "Aliens who are anarchists;": "or aliens who the Attorney General knows or has reason to believe seek to enter the United States for the purpose of engaging in activities which will endanger the public safety of the United States".

Approved May 25, 1948.

LEGISLATIVE HISTORY OF PUBLIC LAW 552 OF 1948

Senate Report No. 1199, Apr. 30, 1948

[To accompany H.R. 1878]

House Report No. 1286, Jan. 29, 1948

[To accompany H.R. 1878]

The Senate Report repeats in substance the House Report

Senate Report No. 1199

The Committee on the Judiciary, to whom was referred the Bill (H.R. 1878) to amend the immigration laws to deny admission to the United States of persons who may be coming here for the purpose of engaging in activities which will endanger the public safety of the United States, do now report the bill favorably to the Senate with amendments, and recommend that the bill as amended do pass.

Purpose of the Bill

The purpose of the bill is to give the Attorney General the same power to exclude aliens who might be coming to the United States for the purpose of engaging in activities which would endanger the public safety as is presently vested in the Secretary of State to refuse visas to the same class of persons coming to the United States.

The purpose of the amendments is to make it clear that the power to be exercised under the bill is related to aliens only and not to persons other than aliens. It is highly improbable that the power vested under the terms of the bill

could under the Constitution of the United States be used to exclude citizens.

STATEMENT OF FACTS

The pertinent facts which prompt the passage of the bill are set forth in a letter dated June 20, 1947, from the then assistant to the Attorney General, to the chairman of the Committee on the Judiciary of the House of Representatives, which letter reads as follows:

JUNE 20, 1947.

HON. EARL C. MICHENER,
Chairman, Committee on the Judiciary,
House of Representatives,
Washington, D. C.

MY DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice relative to a bill (H.R. 1878) which would amend the immigration laws to exclude from admission to the United States persons who the Attorney General knows or has reason to believe seek to enter the country for the purpose of engaging in activities which would endanger the public safety.

Under existing law (22 U. S. C. 228), whenever an American diplomatic or consular officer knows or has reason to believe that an alien seeks to enter the United States for the purpose of engaging in activities which will endanger the public safety, he must refuse to issue to such alien an immigration visa or any other document entitling the alien to present himself for admission into the country. However, if the alien succeeds in concealing such purpose from the diplomatic or consular officer and obtains a visa or other travel document, he cannot legally be denied admission on the ground of his purpose after he reaches the United States.

The bill under consideration would correct this apparent deficiency in the immigration laws, and, subject to the following suggestion, the Department recommends its enactment.

The bill provides for the insertion of its amending clause before specific language contained in section 3 of the act of February 5, 1917 (39 Stat. 875), which language does not appear to have been retained verbatim in the acts of October 16, 1918 (40 Stat. 1012), June 5, 1920 (41 Stat. 1008), or subsequent acts, which have been codified under 8 U. S. C. 137, relating to the exclusion of anarchists and similar classes of undesirable aliens.

For purpose of clarity in construction, therefore, it is suggested that the bill be amended after its enacting clause to read as follows:

> "That section 1 of the act of June 5, 1920 (41 Stat. 1008), as amended, is further amended by inserting the following clause immediately after the clause 'Aliens who are anarchists': 'or persons who the Attorney General knows or has reason to believe seek to enter the United States for the purpose of engaging in activities which will endanger the public safety of the United States.' "

The Director of the Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely yours,

DOUGLAS W. MCGREGOR,
The Assistant to the Attorney General.

The committee after consideration of all the facts is of the opinion that the bill (H. R. 1878), as amended, should be enacted and it therefore accordingly so recommends its enactment.

Proclamation No. 2523

CONTROL OF PERSONS ENTERING AND LEAVING THE UNITED STATES

By the President of the United States of America

A Proclamation

Whereas the act of Congress approved on May 22, 1918 (40 Stat. 559), as amended by the act of Congress approved on June 21, 1941 (Public Law 114, 77th Cong., chap. 210, 1st sess., 55 Stat. 252)[1] vests authority in me to impose restrictions and prohibitions in addition to those otherwise provided by law upon the departure of persons from and their entry into the United States when the United States is at war, or during the existence of the national emergency proclaimed by the President on May 27, 1941, or, as to aliens, whenever there exists a state of war between or among two or more states, and when I find that the interests of the United States so require; and

Whereas the national emergency proclaimed by me on May 27, 1941 is still existing; and

Whereas there unhappily exists a state of war between or among two or more states and open hostilities engage a large part of the Eastern Hemisphere; and

Whereas the exigencies of the present international situation and of the national defense require that restrictions and prohibitions, in addition to those otherwise provided by law, be imposed upon the departure of persons from and their entry into the United States, including the

Panama Canal Zone, the Commonwealth of the Philippines, and all territory and waters, continental or insular, subject to the jurisdiction of the United States:

NOW, THEREFORE, I, FRANKLIN D. ROOSEVELT, President of the United States of America, acting under and by virtue of the authority vested in me as set forth above, do hereby find and publicly proclaim and declare that the interests of the United States require that restrictions and prohibitions, in addition to those otherwise provided by law, shall be imposed upon the departure of persons from and their entry into the United States, including the Panama Canal Zone, the Commonwealth of the Philippines, and all territory and waters, continental or insular, subject to the jurisdiction of the United States; and I make the following rules, regulations, and orders which shall remain in force and effect until otherwise ordered by me:

(1) After the effective date of the rules and regulations hereinafter authorized, no citizen of the United States or person who owes allegiance to the United States shall depart from or enter, or attempt to depart from or enter, the United States, including the Panama Canal Zone, the Commonwealth of the Philippines, and all territory and waters, continental or insular, subject to the jurisdiction of the United States, unless he bears a valid passport issued by the Secretary of State or, under his authority, by a diplomatic or consular officer of the United States, or the United States High Commissioner to the Philippine Islands, or the chief executive of Hawaii, of Puerto Rico, of the Virgin Islands, of American Samoa, or of Guam, or unless he comes within the provisions of such exceptions or fulfils such

conditions as may be prescribed in rules and regulations which the Secretary of State is hereby authorized to prescribe in execution of the rules, regulations, and orders herein prescribed. Seamen are included in the classes of persons to whom this paragraph applies.

(2) No alien shall depart from or attempt to depart from the United States unless he is in possession of a valid permit to depart issued by the Secretary of State or by an officer designated by the Secretary of State for such purpose, or unless he is exempted from obtaining a permit, in accordance with rules and regulations which the Secretary of State, with the concurrence of the Attorney General, is hereby authorized to prescribe in execution of the rules, regulations, and orders herein prescribed; nor shall any alien depart from or attempt to depart from the United State at any place other than a port of departure designated by the Attorney General or by the Commissioner of Immigration and Naturalization or by an appropriate permit-issuing authority designated by the Secretary of State.

No alien shall be permitted to depart from the United States if it appears to the satisfaction of the Secretary of State that such departure would be prejudicial to the interests of the United States as provided in the rules and regulations hereinbefore authorized to be prescribed by the Secretary of State, with the concurrence of the Attorney General.

(3) After the effective date of the rules and regulations hereinafter authorized, no alien shall enter or attempt to

enter the United States unless he is in possession of a valid unexpired permit to enter issued by the Secretary of State, or by an appropriate officer designated by the Secretary of State, or is exempted from obtaining a permit to enter in accordance with the rules and regulations which the Secretary of State, with the concurrence of the Attorney General, is hereby authorized to prescribe in execution of these rules, regulations, and orders.

No alien shall be permitted to enter the United States if it appears to the satisfaction of the Secretary of State that such entry would be prejudicial to the interests of the United States as provided in the rules and regulations hereinbefore authorized to be prescribed by the Secretary of State, with the concurrence of the Attorney General.

(4) No person shall depart from or enter, or attempt to depart from or enter, the United States without submitting for inspection, if required to do so, all documents, articles, or other things which are being removed from or brought into the United States upon or in connection with such person's departure or entry, which are hereby made subject to official inspection under rules and regulations which the Secretary of State in the cases of citizens, and the Secretary of State with the concurrence of the Attorney General in the cases of aliens, is hereby authorized to prescribe.

(5) A permit to enter issued to an alien seaman employed on a vessel arriving at a port in the United States from a foreign port shall be conditional and shall entitle him to enter only in a case of reasonable necessity in which the immigration auth ities are satisfied that such entry would not be contrary to the interests of the United States;

but this shall not be deemed to supersede the provisions of Executive Order 8429, dated June 5, 1940 concerning the documentation of seamen.

(6) The period of validity of a permit to enter or a permit to depart, issued to an alien, may be terminated by the permit-issuing authority or by the Secretary of State at any time prior to the entry or departure of the alien, provided the permit-issuing authority or the Secretary of State is satisfied that the entry or departure of the alien would be prejudicial to the interests of the United States which it was the purpose of the above-mentioned acts to safeguard.

(7) Except as provided herein or by rules and regulations prescribed hereunder, the provisions of this proclamation and the rules and regulations issued in pursuance hereof shall be in addition to, and shall not be held to repeal, modify, suspend, or supersede any proclamation, rule, regulation, or order heretofore issued and now in effect under the general statutes relating to the immigration of aliens into the United States; and compliance with the provisions of this proclamation or of any rule or regulation which may hereafter be issued in pursuance of the act of May 22, 1918, as amended by the act of June 21, 1941, shall not be considered as exempting any individual from the duty of complying with the provisions of any statute, proclamation, rule, regulation, or order heretofore issued and now in effect.

(8) I direct all departments and agencies of the Government to cooperate with the Secretary of State in the execution of his authority under this proclamation and any subsequent proclamation, rule, regulation, or order promulgated

in pursuance hereof. They shall upon request make available to the Secretary of State for that purpose the services of their respective officials and agents. I enjoin upon all officers of the United States charged with the execution of the laws thereof the utmost diligence in preventing violations of the act of May 22, 1918, as amended by the act of June 21, 1941, and in bringing to trial and punishment any persons who shall have violated any provisions of such acts.

(9) Paragraph 6, part I, of Executive Order 8766, issued June 3, 1941, is hereby superseded by the provisions of this proclamation and such regulations as may be prescribed hereunder.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

DONE at the city of Washington this 14th day of November in the year of our Lord nineteen hundred and forty-one, and of the Independence of the United States of America the one hundred and sixty-sixth.

[SEAL]

By the President: FRANKLIN D. ROOSEVELT

CORDELL HULL,
Secretary of State.

Proclamation No. 2714

(12 F. R. 1)

CESSATION OF HOSTILITIES OF WORLD WAR II

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

With God's help this nation and our allies, through sacrifice and devotion, courage and perseverance, wrung final and unconditional surrender from our enemies. Thereafter, we, together with the other United Nations, set about building a world in which justice shall replace force. With spirit, through faith, with a determination that there shall be no more wars of aggression calculated to enslave the peoples of the world and destroy their civilization, and with the guidance of Almighty Providence great gains have been made in translating military victory into permanent peace. Although a state of war still exists, it is at this time possible to declare, and I find it to be in the public interest to declare, that hostilities have terminated.

NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, do hereby proclaim the cessation of hostilities of World War II, effective twelve o'clock noon, December 31, 1946.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

DONE at the City of Washington this 31st day of December in the year of our Lord nineteen hundred and forty-six,

and of the Independence of the United States of America the one hundred and seventy-first.

[SEAL]

By the President: HARRY S. TRUMAN.

JAMES F. BYRNES,
The Secretary of State.

Code of Federal Regulations (C. F. R)

§175.53 TITLE 8—ALIENS AND NATIONALITY

§175.53 *Classes of aliens whose entry is deemed to be prejudicial to the public interest.* The entry of an alien who is within one of the following categories shall be deemed to be prejudicial to the interests of the United States for the purpose of §§175.41 to 175.63, inclusive:

(a) Any alien who belongs to one of the classes specified in the act of October 16, 1918, as amended. (40 Stat. 1012, 41 Stat. 1008-9, 54 Stat. 673; 8 U. S. C. 137)

(b) Any alien who is a member of, affiliated with, or may be active in the United States in connection with or on behalf of a political organization associated with or carrying out policies of any foreign government opposed to the measures adopted by the Government of the United States in the public interest, or in the interest of national defense, or in the interest of the common defense of the countries of the Western Hemisphere, or in the prosecution of the war.

(c) Any alien in possession of, or seeking to procure, unauthorized secret information concerning the plans, preparations, equipment, or establishments for the national defense of, or the prosecution of the war by, the United States.

(d) Any alien engaged in activities designed to obstruct, impede, retard, delay, or counteract the effectiveness of the measures adopted by the Government of the United States for the defense of the United States or for the defense of any other country, or the prosecution of the war.

(e) Any alien engaged in activities designed to obstruct, impede, retard, delay, or counteract the effectiveness of any plans made or steps taken by any country of the Western Hemisphere in the interest of the common defense of the countries of such Hemisphere.

(f) Any alien engaged in organizing, teaching, advocating, or directing any rebellion, insurrection, or violent uprising against the United States.

(g) Any alien engaged in a plot or plan to destroy materials, or sources thereof, vital to the defense of, or the prosecution of the war by, the United States, or to the effectiveness of the measures adopted by the United States for the defense of any other country.

(h) Any alien whose admission would endanger the public safety, as provided in any Executive order issued in pursuance of the act of Congress approved June 20, 1941 (ch. 209, 55 Stat. 252; 22 U. S. C., Sup., 228, 229).

(i) Any alien enemy: *Provided*, That this excluding provision shall not apply to aliens who

(1) Present valid permits to enter issued on or after November 14, 1941, or are exempted under these regulations from presenting permits to enter and are found to be otherwise admissible under §§ 175.41 to 175.63, inclusive; or

(2) Before September 1, 1939, became and still are citizens or subjects of any foreign country at war with Japan and who have not, since September 1, 1939, and before May 8, 1945, returned to any enemy or enemy-controlled territory; or

(3) Are under 14 years of age; or

(4) Are excepted from the excluding provisions of this subsection in the discretion of the permit-issuing authority or of the Secretary of State.

(j) Any alien found to be, or charged with being, a war criminal by the appropriate authorities of the United States or one of its co-belligerents, or an alien who has been guilty of, or who has advocated or acquiesced in activities or conduct contrary to civilization and human decency on behalf of the Axis countries during the present World War.

(k) Any alien who is not within one or more of the classes defined in paragraphs (a) to (j), inclusive, but in whose case circumstances of a similar character may be found to exist, which render the alien's admission prejudicial to the interests of the United States, which it was the purpose of the act of June 21, 1941 (55 Stat. 252; 22 U. S. C., Sup., 223) to safeguard.

§ 175.54 *Aliens leaving close relatives in certain foreign countries.* The fact that a spouse, or a relative of the first degree of consanguinity, with whom an applicant has main-

tained close family ties, remains abroad in any country, or in territory under the direct or indirect control of any country, the government of which is found by the Secretary of State to have adopted measures or policies contrary to the measures or policies adopted by the Government of the United States in the interest of national or international security, may be considered with other evidence in determining whether such applicant may be granted a permit to enter or whether the entry of such applicant should be denied upon the ground that the applicant is within one or more of the categories set forth in § 175.53.

§ 175.55 *Permission to enter the Canal Zone, Guam, American Samoa, and the Philippine Islands.* In addition to the classes of aliens prohibited from entering the United States under the provisions of this chapter, the chief executive officers of the Canal Zone, Guam, American Samoa, and the Philippine Islands are authorized to prescribe, with the approval of the Secretary of State and the Attorney General, additional prohibited classes for the areas under their jurisdiction, and such officers are authorized to issue under the same conditions such regulations as they may deem to be necessary to carry out the provisions of this chapter, including any modifications of a substantive or procedural character.

CROSS REFERENCES: For regulations relating to the control of aliens entering the Canal Zone, issued by the Governor of the Panama Canal, approved by the Secretary of State and by the Attorney General, see Title 35, CFR, 1945, Supp., Part 30.

§ 175.56 *Aliens traveling through areas of military operations or occupation.* In addition to all other applicable

restrictions and requirements, in the case of an alien who desires to proceed to the United States and who intends to proceed thereafter to or through any area designated as an area of active military operations or occupation, application shall be made for any military permit required for travel to or through such area. Such application must be approved before a permit to enter is granted.

§ 175.57 *Entry not permitted in special cases.* (a) Any alien, even though in possession of a permit to enter, or exempted under §§ 175.41 to 175.63, inclusive, from obtaining a permit to enter, may be excluded temporarily if at the time he applies for admission at a port of entry it appears that he is or may be excludable under one of the categories set forth in § 175.53. The official excluding the alien shall immediately report the facts to the head of his department, who will communicate such report to the Secretary of State. Any alien so temporarily excluded by an official of the Department of Justice shall not be admitted and shall be excluded and deported unless the Attorney General, after consultation with the Secretary of State, is satisfied that the admission of the alien would not be prejudicial to the interests of the United States. Any alien so temporarily excluded by any other official shall not be admitted and shall be excluded and deported unless the Secretary of State is satisfied that the admission of the alien would not be prejudicial to the interests of the United States.

(b) In the case of an alien temporarily excluded by an official of the Department of Justice on the ground that he is, or may be excludable under one or more of the categories set forth in § 175.53, no hearing by a board of special in-

quiry shall be held until after the case is reported to the Attorney General and such a hearing is directed by the Attorney General or his representative. In any special case the alien may be denied a hearing before a board of special inquiry and an appeal from the decision of that board if the Attorney General determines that he is excludable under one of the categories set forth in § 175.53 on the basis of information of a confidential nature, the disclosure of which would be prejudicial to the public interest.

APPENDIX II

Order

RECENT DECISION OF JUDGE HOLLAND, FLORIDA, INTERPRETING 8 C. F. R. 175, 57.

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF FLORIDA,

MIAMI DIVISION.

No. 2712-M—Civil

In the Matter of the Application of
JOHN IVAN VISIC

For a writ of Habeas Corpus:

FRANCIS J. H. DEVER, Officer in Charge, Miami Office—Immigration and Naturalization Service,
Respondent.

This case is before the Court on the Petitioner's motion for a Better Statement.

The Federal Regulation Part 175.57, Title 8, Code of Federal Regulations, does not justify the Attorney General to make the order contained in the return to the order to show cause. The Presidential Proclamation No. 2523 of November 14, 1941, requires the order to be made by the Secretary of State. The concurrence of the Attorney General in rules and regulations prescribed by the Secretary of

State, does not justify the action of the Attorney General under the said Regulation 175.57.

The motion is granted. Ten days are allowed for compliance.

DONE AND ORDERED at Miami, Florida, this 24th day of November, 1948.

JOHN W. HOLLAND,
United States District Judge.

Final Judgment and Order

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF FLORIDA,

MIAMI DIVISION.

2712-M—Civil

In the Matter of the Application of
JOHN IVAN VISIC

For a Writ of Habeas Corpus:

FRANCIS J. H. DEVER, Officer in Charge, Miami Office, Immigration and Naturalization Service,

Respondent.

The above cause coming to be heard before me in open court and petitioner having appeared by his attorneys and respondent having appeared in person and by his attorneys and petitioner's oral motion to strike respondent's motion for rehearing on petitioner's motion for better statement having been granted and respondent having declined and refused to produce the official records of the Department of Justice concerning petitioner's exclusion under Part 175.57 Title 8 Code of Federal Regulations on the ground that said records of the Department of Justice were confidential and that their production was forbidden by Department of Justice order No. 3229 of May 2, 1939 and I having issued a writ of habeas corpus and said writ having been duly served upon respondent and respondent having waived any waiting period required or permitted by statute for his response to said writ and respondent having declined to produce the

aforesaid official records relating to petitioner's exclusion on the same aforesaid grounds and respondent having proffered evidence to support and prove the allegations in his return to the order to show cause, it is hereby

ORDERED that respondent be restrained from deporting petitioner from the United States under the exclusion proceedings had under the aforesaid Part 175.53 and Part 175.57 and that such proceedings be terminated forthwith, and it is further

ORDERED that petitioner be remanded into the custody of the respondent for consideration of petitioner's application for admission to the United States in accordance with the procedure prescribed by Section 16 and Section 17 of the Immigration Act of February 5, 1917 (8 U. S. C. 152 and 153) and regulations made pursuant thereto, and it is further

ORDERED that respondent, pending final determination of petitioner's application for admission to the United States as aforestated shall release petitioner upon petitioner's furnishing bond in the sum of Five Hundred Dollars ($500.00) with good and sufficient sureties as required by law and regulation, conditioned to insure petitioner's appearance in the above proceedings in connection with his application for admission and for his appearance for deportation should that be finally ordered and further conditioned that respondent shall during the pendency of those proceedings remain within the confines of the Southern Judicial District of Florida.

DONE AND ORDERED in Chambers of United States Court House in the City of Miami, County of Dade and State of Florida this 7th day of December, a.D. 1948.

JOHN W. HOLLAND,
U. S. District Judge.

OPINION OF THE ATTORNEY GENERAL OF THE UNITED STATES.

NATURALIZATION. PROOF OF ENTRY FOR PERMANENT RESIDENCE.

Under section 312 of the Nationality Act of 1940, proof of legal entry for permanent residence is a condition precedent to naturalization of an alien spouse of an American citizen who is abroad in the employment of the Government.

MAY 26, 1941.

The Secretary of State.

MY DEAR MR. SECRETARY: Reference is made to your communication of April 23, 1941, requesting my opinion "whether an alien spouse of a citizen of the United States who is abroad in the employment of the Government of the United States is required under section 312 of the Nationality Act of 1940 to prove that he or she legally entered the United States for permanent residence under the immigration laws of the United States as a condition precedent to naturalization." The Nationality Act of 1940 (Public, No. 853, 76th Cong.) provides in section 301 (d) that "a person may be naturalized as a citizen of the United States in the manner and under the conditions prescribed in this act, and not otherwise." Other provisions of the act specify certain general requirements with which all aliens not exempt therefrom must comply as a prerequisite to naturalization. Among these general requirements are (1) the filing in the prescribed manner of a declaration of intention to become a citizen of the United States, (2) the filing in a court of competent jurisdiction of a petition for naturalization, (3) proof of legal entry in the United States for permanent residence, and (4) proof of prescribed periods of residence within the United States and within the jurisdiction of the court before which the naturalization proceeding is pending. See section 332, paragraphs 9, 11, 13, and 14.

Section 312 of the act reads in pertinent part:

"An alien, whose spouse is (1) a citizen of the United States, (2) in the employment of the Government of the United States, * * * and (3) regularly stationed abroad in such employment, and who is (1) in the United States at the time of naturalization, and (2) declares before the naturalization court in good faith an intention to take up residence within the United States immediately upon termination of such employment abroad of the citizen spouse, *may be naturalized upon compliance with all requirements of the naturalization laws, with the following exceptions:*

"(a) No declaration of intention shall be required; and

"(b) No prior residence within the United States or within the jurisdiction of the naturalization court or proof thereof shall be required." (Italics supplied.)

Section 312 is one of seventeen sections of the Nationality Act of 1940 dealing with the naturalization of special classes of aliens. Each of these sections prescribes how persons mentioned in it may be naturalized, expressly exempting them, wholly or in part, from compliance with one or more of the general requirements for naturalization.

Some of these sections expressly exempt persons named in them from the requirement, among others, to prove legal entry in the United States for permanent residence. For example, section 317 expressly exempts persons mentioned in it from that requirement and also from the requirements (1) to file declaration of intention to become a citizen and (2) to prove the statutory periods of residence within the United States and within the jurisdiction of the court. Section 312 also expressly exempts persons named in it from the two requirements last mentioned but does not so exempt them from the other. It is believed that if the Congress had

intended to extend that exemption to them it would have done this also by express language. See *United States* v. *Manzi*, 276 U. S. 463.

Of significance, also, is the fact that alien spouses of citizens other than those mentioned in section 312 are not exempted from the requirement here in question. The other exemptions in section 312 being expressly granted, it is my opinion that the implied grant to spouses of one class of citizens of an exemption not granted to those of other classes should not be read into the section unless the purpose to grant it appears by clear implication. I find no such implication.

Attention is also invited to the regulations issued under the statute by this Department on January 9, 1941 (see Federal Register, issue of January 11, 1941, pp. 230 *et seq.*), which show an administrative interpretation in accord with the above view. Section 363.4 of these regulations in naming the classes of persons who may be naturalized without filing certificates of entry in the United States for permanent residence does not include persons mentioned in section 312.

For the reasons given, it is my opinion that an alien spouse of a citizen of the United States who is abroad in the employment of the Government of the United States is required to prove that he or she legally entered the United States for permanent residence under the immigration laws of the United States as a condition precedent to naturalization. It is not necessary, of course, that the entry be for *immediate* permanent residence, since the statute permits naturalization upon a declaration made in good faith of an "intention to take up residence within the United States immediately upon termination of such employment abroad of the citizen spouse."

Respectfully,

ROBERT H. JACKSON.

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Supreme Court of the United States

October Term, 1949

No. 54

54

UNITED STATES OF AMERICA,
ex rel. ELLEN KNAUFF,

Appellant,

against

EDWARD J. SHAUGHNESSY, Acting District Director of Immigration and Naturalization Service,

Appellee.

APPELLANT'S BRIEF

GUNTHER JACOBSON,
Attorney for Appellant,
36 West 44th Street,
New York, N. Y.

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Supreme Court of the United States

October Term, 1949

No. 54

UNITED STATES OF AMERICA, ex rel. ELLEN KNAUFF,

Appellant,

against

EDWARD J. SHAUGHNESSY, Acting District Director of Immigration and Naturalization Service,

Appellee.

APPELLANT'S BRIEF

All references to folios, unless otherwise indicated.

Opinions Below

The opinion of the Court of Appeals for the Second Circuit is reported in 173 F. (2d) 599. The opinions of the District Court upon the original hearing (R. 28-35) and upon re-argument (R. 54) have not been reported.

Jurisdiction

The order of the Court of Appeals for the Second Circuit was entered on the 11th day of March, 1949. The petition for certiorari was filed on April 18, 1949. Certiorari was granted on May 2, 1949, 336 U. S. 971, 69 S. Ct. 941. The jurisdiction of this court is invoked under Section 1254 (1) of Title 28, U. S. C.

Questions Presented

The appellee invokes the provisions of Sections 175.53 to 175.57 of Title 8, Code of Federal Regulations, in justification of appellant's exclusion from the United States, without any legal process. The following questions are therefore presented in this case:

(1) Are the provisions of Sections 175.53 to 175.57 of Title 8, C. F. R., valid and in harmony with the Constitution and statutes of the United States? Are in particular said regulations in harmony with the Fifth Amendment to the Constitution, with the Passport Act of 1918 (22 U. S. C. 223), and the Proclamation of the President No.2523 as amended by Proclamation 2850? It is contended that Sections 175.53 to 175.57, of Title 8, C. F. R. are unauthorized under the said Amendment to the Constitution, said Passport Act and Presidential Proclamations, and that, even if authorized thereunder the provisions of the War Bride Act (8 U. S. C. 232-236) take precedent over said Regulations, 8 C. F. R. 175.53-175-57. The War Bride Act makes the admission of qualified war brides mandatory.

(2) Is the appellant, being within the United States and being the wife of an employee of the Government of the United States who is stationed abroad, entitled to access to a Naturalization Court pursuant to Section 312 of the Nationality Act of 1940 (8 U. S. C. 712)? May she under said Act offer proof of her good moral character and attachment to the principles of our Constitution, or may the respondent prevent such naturalization proceeding by arbitrarily refusing to process the preliminary petition for naturalization and by preventing thereby the filing of the petition for naturalization? The appellant contends that respondent has no right so to exclude her from naturalization and the naturalization courts.

The courts below have answered all these questions contrary to the contentions of the appellant.

Statement

The appellant, a woman of the age of thirty-three years, of German-Jewish origin (110), applied on August 14, 1948, at the Port of New York for admission to the United States as a war bride (17). On that day she was taken to Ellis Island where she was temporarily excluded from the United States. On October 6, 1948, the Attorney General ordered the appellant finally excluded from the United States (18). No reason for such exclusion was stated when this decision was communicated to appellant's husband on October 8, 1948 (Ex. 13, 148-150), nor was appellant ever granted the statutory admission hearing before a board of special inquiry of the Immigration and Naturalization Service (25).

Appellant, who is of Jewish origin, tried early to escape from Nazi prosecution. Soon after Hitler's ascent to power she went to Czechoslovakia, where she became married to a Czech with the name of Boxhornova. This marriage was no success and ended in a divorce. When Nazi Germany swallowed up Czechoslovakia in 1938-1939, appellant continued her flight for safety and in 1939 found refuge in Great Britain (110).

Being grateful to Britain for her hospitality and desirous of fighting the Nazis, appellant enlisted in the Royal Air Force where she served from January 1, 1943 to May 30, 1946. She was honorably discharged as a flight sergeant with the highest character rating awarded by the Royal Air Force (Ex. 11, p. 45).

Thereafter the petitioner was at once employed by the Occupation Forces in Germany (30) of the War Depart-

ment of the United States. There the petitioner served first in the Civil Censorship Division until it was dissolved in the beginning of August, 1947 (111).. Exhibit 12 (142-147) shows that after serving in said division for more than a year (38), Ellen Boxhornova (143, right column) was awarded the European—African—Middle-Eastern—Theater Ribbon for faithful and satisfactory service. Exhibit 1 (37-39) is a letter of the Adjutant of the Civil Censorship Division of August 6, 1947, certifying appellant's satisfactory conduct and her efficiency rating of "Very Good". Exhibit 6 (61-63), Exhibit 5 (58-59), Exhibit 7, p. 23), Exhibit 10 (76-81) are further testimonials showing that the petitioner, up to the time she departed for the United States, rendered services to our Military Government in Frankfurt am Main and that these services were recognized by her superiors as "excellent". Said testimonials describe petitioner as "discreet, capable, and interested in her work". The decision below concludes from the record (61): "Her official record in so far as appears is excellent."

The appellant on February 28, 1948, married Mr. Kurt W. Knauff. Mr. Knauff is a citizen of the United States and an honorably discharged veteran of our armed forces (9). Mr. Knauff's discharge papers (p. 5) show the battles and campaigns in Europe in which he participated and the medals he received. He is now serving our Military Government in Frankfurt am Main as a civilian employee (113).

Mr. Knauff married the appellant with the consent of the Commanding General of the Frankfurt military post of the U. S. Army. Before this consent was given a thorough check was made by all service commands and intelligence agencies (31).

Being the wife of an honorably discharged veteran, the appellant qualifies for the special benefits of the War Bride

Act (p. 49, *infra*). In the teeth of this statute she was excluded from the United States without any legal or administrative process. Being the wife of an employee of our government stationed abroad, the appellant qualifies for immediate naturalization under Section 312 of the Nationality Act (p. 31, *infra*). Her preliminary petition was duly filed with the District Director of Immigration and Naturalization. However she was denied by said administrative authorities naturalization by refusal to process her petition as provided by law, and this was done although naturalization is a court proceeding.

Appellant's husband sought by writ of habeas corpus court review of appellant's exclusion, on the ground that it was arbitrary and void of any element of due process. The writ of habeas corpus was allowed on October 9, 1948 (4-6). After argument and re-argument, the writ was dismissed on January 3, 1948) by an order (162-165) of the United States District Court for the Southern District of New York. Judge Hulbert wrote two opinions, the first one dated December 4, 1948 (82-105), the second one dated December 27, 1948 (160-161).

The Court of Appeals, upon appeal, affirmed Judge Hulbert's order by decree dated March 11, 1949, 173 F. 2d 599.

The appellant from her arrival in the United States had been held at Ellis Island until May 4, 1949, as her application for release *pendente lite* had been denied by both courts below.

On May 4th, 1949, pursuant to an order dated May 2nd, 1949, made by Mr. Justice Robert H. Jackson of this court, appellant, upon posting a bond of one thousand dollars, was released from custody.

POINT I

It was error on the part of the courts below to sanction the exclusion of a war bride from the United States by ukase of the Attorney General, without a hearing of any kind, without any fact finding procedure, without confronting her with charges or evidence of any kind, without permitting her the assistance of counsel.

A. The Due Process Clause of the Fifth Amendment to the Constitution protects the privileges under the War Bride Act of an honorably discharged veteran and his spouse.

Ellen Knauff, the appellant herein, is the alien wife of an honorably discharged war veteran of our army. When she applied for admission to the United States as a war bride in August, 1948, she was whisked to Ellis Island. On October 8, 1948, Mrs. Knauff's husband, Mr. Kurt W. Knauff, was informed by Mr. Zucker, an employee of the Immigration and Naturalization Service, in a letter set forth at length on folios 148 to 150 of the record, as follows:

> "Information was sent to this office to the effect that an order has been entered directing that Mrs. Ellen Knauff be denied admission to the United States and that she be returned to the country whence she came."

These are the entire proceedings administered to this war bride, which the courts below have sanctioned as legal, which are here claimed to be arbitrary, tyrannical and unconstitutional.

Mr. Kurt W. Knauff, husband of appellant, personally came to this country to assist his wife. He instituted the

present proceedings. The writ of habeas corpus herein was issued upon Mr. Knauff's petition. It is emphasized that Mr. Knauff personally is seeking redress in this proceeding although his name does not appear in the title. This court, in disposing of this matter, is requested to consider Mr. Knauff a party to this appeal as well as to all proceedings below.

The War Bride Act, Public Law 271 of 1945, provides that:

> "alien spouses * * * of United States citizens * * * having an honorable discharge certificate from the armed forces of the United States during the Second World War shall, if otherwise admissible under the immigration laws * * *, be admitted to the United States."

The language of the statute is clear and unambiguous. "Shall" be admitted means *Must!*

The petitioner, therefore, under Public Law 271 had to be admitted, unless inadmissible under the Immigration Laws.

The grounds for the exclusion of aliens are set forth in Section 3 of the Immigration Act of February 5, 1917, as amended, — 8 U. S. C. 136, 137. Anarchists, opposers of organized government, advocates of violence, publishers of subversive doctrines and similar elements are thus excluded. To these have been added by act of Congress of May 25, 1948, "aliens who the Attorney General knows or has reason to believe seek to enter the United States for the purpose of engaging in activities which will endanger the public safety of the United States" (Public Law 552, *infra, p.* 51). This new law was obviously designed to exclude Fascists, Nazis, Communists, and similar political

agents, who come here for the purpose of spreading obnoxious doctrines.

No such charges were made against the appellant, and she therefore does not fall under any of the statutory exclusion grounds.

In order to justify appellant's exclusion, the appellee stated that she was excluded by order of the Attorney General pursuant to Section 175.57 of Title 8 of the Code of Federal Regulations (*infra*, p. 68). Said section holds that an alien may be excluded from the United States by the Attorney General and the Secretary of State, and that no hearing by a board of special inquiry shall be held until after the case has been reported to the Attorney General and such hearing is directed by the Attorney General. Said section further holds that the Attorney General may deny the alien hearings if he determines that the alien is excludable under one of the categories set forth in Section 175.53 "on the basis of information of a confidential nature, the disclosure of which would be prejudicial to the public interest." The decision below, page 64, holds that appellant was excluded and ordered deported to Germany as a result of the procedure provided in Section 175.57 and in exercise of the authority there given the Attorney General.

With this holding issue is taken here on the ground that Section 175.57, in giving the Attorney General power to exclude aliens without a hearing or any kind of process, is unconstitutional.

Amendment V of the Constitution provides:

> "No person shall * * * be deprived of life, liberty, or property, without due process of law."

These principles apply to immigration proceedings. The Supreme Court in *Yamataya* v. *Fisher*, 1903, 189 U. S. 86, 23 S. Ct. 611, 614 held with respect to immigration proceedings:

"But this court has never held, nor must we now be understood as holding, that administrative officers, when executing the provisions of a statute involving the liberty of persons, *may disregard the fundamental principles that inhere in 'due process of law' as understood at the time of the adoption of the Constitution.* One of these principles is that no person shall be deprived of his liberty without opportunity, at some time, to be heard, before such officers, in respect of the matters upon which his liberty depends, * * * Therefore, it is not competent for * * * any executive officer * * * arbitrarily to cause an alien * * * to be taken into custody and deported without giving him all opportunity to be heard upon the questions invading his right to be and remain in the United States. No arbitrary power can exist where the principles involved in due process of law are recognized."

While the *Yamataya* case involved the deportation of aliens who had in fact entered, this court applied the same doctrine in an exclusion case: *Chin Yow* v. *U. S.*, 1908, 208 U. S. 8, 28 S. Ct. 201, where it held that an alien arriving by boat from overseas suffers an impairment of his liberties if arbitrarily denied entry.

Similarly, Mr. Justice Stone, speaking for this Court in *Lloyd Sabaudo Societa* v. *Elting*, 1932, 287 U. S. 329, 335-336, 53 St. Ct. 167, held:

"The action of the Secretary is, nevertheless, subject to some judicial review, as the courts below held. The courts may determine whether his action is within his statutory authority, compare *Gonzales* v. *Williams*, 192 U. S. 1; *Gegiow* v. *Uhl*, 239 U. S. 3, whether there was any evidence before him to support his determination, compare *Vajtauer* v. *Com-*

missioner of Immigration, 273 U. S. 103, and whether the procedure which he adopted in making it satisfies elementary standards of fairness and reasonableness, essential to the due administration of the summary proceeding which Congress has authorized. Compare *Kwock Jan Fat* v. *White*, 253 U. S. 454; *Tang Tun* v. *Edsell*, 223 U. S. 673; *Chin Yow* v. *United States*, 208 U. S. 8, 12; *The Japanese Immigrant Case*, 189 U. S. 86, 100, 101; see *United States ex rel. Iorio* v. *Day*, 34 F. (2d) 920; *Whitfield* v. *Hanges*, 222 Fed. 745."

That fair hearings are a constitutional requirement in immigration procedure has been held in

U. S. ex rel. Brant v. *District Director*, 1941, 40 F. Supp. 371;

Johnson v. *Tertzag*, 1924, 2 F. 2d 40, D. C. Mass.;

Kwock Jan Fat v. *White*, 1919, 253 U. S. 454, 464, 40 S. Ct. 566.

Ex Parte Petkos, 1913, 212 F. 275, D. C. Mass.; reversed on other grounds 214 F. 978;

U. S. ex rel. Reimann v. *Martin*, 193 F. 795;

Gung You v. *Nagle*, 1929, 34 F. 2d 848;

Tod v. *Waldman*, 1924, 266 U. S. 113; 45 S. Ct. 85.

O'Connell ex rel. Foo v. *Ward*, 1942, 126 F. 2d 615.

Inasmuch as relator's right to enter and her husband's right to have her admitted (127, 128) under the War Bride Act were determined in this case without the statutory hearing, without any hearing at all, after denial of counsel, without any notice to the alien of the charges that were made against her and without the offering of any evidence against her (17, 18, 25), the proceedings of the Attorney General are void and of no effect.

Occasionally court decisions have held that aliens not yet admitted to the United States have no standing in our courts to challenge the constitutionality of Acts of Congress.* To this we reply that we attack no act of Congress but a departmental regulation. Furthermore, the theory that an alien never admitted to the United States may not invoke the protection of the U. S. Constitution is, we believe, untenable. The contrary was recently decided by the U. S. Court of Appeals for the District of Columbia in

> *Eisentragen* v. *Forrestal*, 1949, 174 F. 2d 961, and *Flick* v. *Johnson*, 1949, 174 F. 2d 983.

In the *Eisentrager* case Eisentrager applied for a writ of habeas corpus against the Secretary of Defense on the ground that he, a German National, was held illegally by the United States Army at Landsberg Prison in Germany. The district court dismissed the writ for lack of jurisdiction. The Court of Appeals for the District of Columbia reversed and remanded.

In sustaining jurisdiction the Court of Appeals held (963 to 965):

> "1. We think that any person who is deprived of his liberty by officials of the United States, acting under purported authority of that Government and who can show that his confinement is in violation of a prohibition of the Constitution, has a right to the writ. This conclusion necessarily follows from the following premises. *First.* The Fifth Amendment, by its terms, applies to 'any person'. *Second.* Action of Government officials in violation of the Constitution is void. This is the ultimate essence of the present controversy. *Third.* A basic and inherent function of the judicial branch of a govern-

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*Kaminer v. *Clark*, March 7, 1949, D. C. D. C., unreported, appelle's brief in opposition to certorari, p. 11.

ment built upon a constitution is to set aside void action by government officials, and so to restrict executive action to the confines of the constitution. In our jurisprudence, no Government action which is void under the Constitution is exempt from judicial power. *Fourth.* The writ of habeas corpus is the established, time-honored process in our law for testing the authority of one who deprives another of his liberty, — 'the best and only sufficient defense of personal freedom.' The writ is the indispensable implementation of constitutional guarantees in respect to personal liberty.

At common law the writ issued to test the validity of confinement under English authority beyond the seas, although the decided cases dealt with British subjects.

• • • • •

We think that constitutional prohibitions apply directly to acts of Government, or Government officials, and are not conditioned upon persons or territory. That is the nub of this whole matter. If the action of Government officials be beyond their constitutional power, it is for that reason a nullity. No more need be proven to establish its invalidity. Absent constitutional power, neither the objective nor the subject matter of an act is material. Whether given circumstances place a given action outside an apparent constitutional prohibition and so within constitutional power, is a different question, to be established by proof and not to be considered unless raised and supported. That is a matter of decision and not of judicial jurisdiction. For these reasons, we think that a distinction between citizens and aliens cannot be made in respect to the applicability of constitutional restrictions upon the power of government.

This case shows that the Fifth Amendment protects aliens as well as citizens, and residents as well as non-residents. The Flick case shows the limitations of this rule. Flick, also a German national confined by army authorities in Germany, was denied relief because the Military Tribunal that tried and convicted him derived its power from an international convention and therefore was not acting as an organ of the government of the United States. It follows that an alien whose liberty is illegally impaired may invoke the protection of the Constitution of the United States if he is held by officers or agents of the United States' government deriving their authority from laws of the United States. There can be no doubt that the appellant herein qualifies for relief by habeas corpus.

It should further be considered that one of the petitioners in this proceeding is Mr. Kurt W. Knauff, husband of the alien, a citizen of the United States. Together with his wife, the appellant, Mr. Knauff is a party here in pressing the challenge of the constitutionality of 8 C. F. R. 175.57. As a citizen and a veteran he appears entitled to raise the constitutional question.

The War Bride Act of Dec. 28, 1945, was a part of that legislation that Congress enacted to show the returning soldiers the appreciation of a grateful nation. In the interpretation of the Act it should be considered that appellant's exclusion is a blow not only to herself but to her husband whose discharge certificate (p. 5 of record) is "a testimonial of Honest and Faithful Service to this country." Mr. Knauff has participated to the full in this proceeding. He was the one who signed the petition for Habeas Corpus (7 to 12). Mr. Knauff, by the act of the Attorney General, is being deprived of his wife. He is being deprived of his wife without due process of law, without any process of law, by administrative fiat. Mr. Knauff has a right to insist that his wife's admissibility be deter-

mined in a proceeding bearing the characteristics of due process.

Mr. Knauff now turns to this High Tribunal and clamors for its determination whether the Attorney General may place an honorably discharged veteran of World War II before the awful choice between his country and his wife; whether the Attorney General may do so without any process of law, on the basis of secret information—that petitioner has alleged to be spurious, mendacious, and based upon a foul denunciation (11, 32).

If this court should hold that aliens arriving from abroad are not protected by the due process clause of the Fifth Amendment to the Constitution, it would create a most ominous precedent; if it should sanction the flimsy proceedings upon which this appellant is excluded from the United States, we would have fallen back into conditions under which witches were hanged in Massachusetts in 1692 upon "spectral evidence." An agent of the Federal Bureau of Investigation makes a confidential report to the Department of Justice. In this report he states that the appellant was a paid agent of Czechoslovakia. That the source of this heresay report is unknown, that appellant clamors that it is false and mendacious avails her nothing, that appellant and her husband, by their front line services, show better merits for the Allied cause in the last war than the Attorney General himself, fails to move him. Upon such evidence the witches of Salem were hanged but ninety years before the Constitution was adopted. To exclude such farce of judicial or government procedure from our commonwealth the Founding Fathers undertook to guarantee that No Person, whether white or black, whether citizen or alien, whether resident or non-resident, shall be deprived of life or liberty or property without Due Process of Law.

Let us not now cast away this priceless inheritance of an enlightened age.

B. The war bride, seeking admission in addition to being protected by constitutional due process, is entitled to statutory due process.

The proceedings concerning the exclusion of aliens to e United States are statutory. The basic provisions are ntained in 8 U. S. C. 152, reading:

> "Every alien who may not appear to the examining immigrant inspector at the port of arrival to be clearly and beyond a doubt entitled to land shall be detained for examination in relation thereto by a board of special inquiry. In the event of rejection by a board of special inquiry, in all cases where an appeal to the Attorney General is permitted by this chapter, the alien shall be so informed and shall have the right to be represented by counsel or other adviser on such appeal."

Reference is further made to 8 U. S. C. 153, from which e following language is quoted:

> "Such boards shall have authority to determine whether an alien who has been duly held shall be allowed to land or shall be deported. All hearings before such boards shall be separate and apart from the public, but the immigrant may have one friend or relative present under such regulations as may be prescribed by the Attorney General. Such boards shall keep a complete permanent record of their proceedings and of all such testimony as may be produced before them; and the decisions of any two members of the board shall prevail, but either the alien or any dissenting member of the said board may appeal through the district director of immigration and naturalization at the port of arrival and the Commissioner of Immigration and Naturalization to the Attorney General, and the taking of such appeal

shall operate to stay any action in regard to the final disposal of any alien whose case is so appealed until the receipt by the district director of immigration and naturalization at the port of arrival of such decision *which shall be rendered solely upon the evidence adduced before the board of special inquiry.* In every case where an alien is excluded from admission in the United States, under any law or treaty now existing or hereafter made, the decision of a board of special inquiry adverse to the admission of such alien shall be final, unless reversed on appeal to the Attorney General." (Emphasis supplied.)

In the present case the statutory manner of proceeding was entirely disregarded. The relator was not placed before a board of special inquiry; she was refused a lawyer; she was briefly questioned by an official with regard to her identity and finally advised that she was excluded from the United States (25). No exclusion grounds were officially stated (Ex. 13, 148-150).

The judges below find a justification for the relator's exclusion and for the proceedings administered to her in sections 175.53 to 175.57 of Title 8, C. F. R., which are set forth *infra*. pp. 63 to 67.

These regulations need careful analysis.

Section 175.53 sets forth the classes of aliens whose entry shall be deemed prejudicial to the United States. Subsection (a) terms prejudicial the entry of aliens who belong to one of the classes specified in the act of October 16, 1918, as amended. This act is identical with section 137 of Title 8, U. S. C. It excludes anarchists, members of subversive organizations, and other similar categories which were discussed on pages 7 and 8 of this brief. It appears, from the record that the classes specified in section 175.53 (a), Title 8, C. F. R., do not apply to this petitioner.

Similarly, subsections (b), (c), (d), (e), (f), and (g), of section 175.53 do quite obviously not apply. Neither does subsection (h) apply: It refers to 22 U. S. C. Sup. 228 and 229, which sections authorize the consular officers to refuse visas to aliens who seek to enter the United States for the purpose of engaging in activities which will endanger the public safety of the United States. As this section is addressed to consular officers, it gives no power of exclusion to the Attorney General and it was for the purpose of closing this gap that Congress enacted Public Law 552 of 1948 (*infra*, p. 51). The legislative history of Public Law 552, printed in full below (pp. 51-53), shows that Congress had in mind filling this gap. The letter of Mr. McGregor, Assistant to the Attorney General, to Representative Michener, of June 20, 1947, *infra* pp. 53-54, therefore expressly states:

> "However, if an alien succeeds in concealing such purpose from the diplomatic or consular officer and obtains a visa or other travel document, he cannot legally be denied admission on the ground of his purpose after he reaches the United States."

It is therefore proved that the relator cannot have been excluded by the Attorney General under subsection (h) of section 175.53 which refers to a power not vested in the Attorney General. If this relator on the other hand was sought to be excluded under Public Law 552, she had a right to a trial before a Board of Special Inquiry, which trial was denied her.

Subsection (i) refers to alien enemies. We need not go into this section further, for it has not been invoked against the relator. It might also be mentioned that, the alien enemy act of 1798 is not an "Immigration Law". An alien spouse of German nativity must quite obviously be admitted under the War Bride Act which expressly holds

that war brides may solely be excluded on the exclusion grounds of the "Immigration Laws".

Subsection (j) is not applicable.

Subsection (k) is a catch-all clause which is invoked by the government in this case. It reads:

> "(k) Any alien who is not within one or more of the classes defined in paragraphs (a) to (j), inclusive, but in whose case circumstances of a similar character may be found to exist, which render the alien's admission prejudicial to the interests of the United States, which it was the purpose of the act of June 21, 1941 (55 Stat. 252; 22 U. S. C. Sup. 223) to safeguard."

It is submitted that this clause is so vague, ambiguous, and void of precise meaning, that it cannot be considered valid. If valid it would authorize the Government to do what it pleases and set aside the statutory admission proceeding at pleasure.

That vague, ambiguous and indefinite statutes are void has always been held by our courts. Reference is made to decisions like *A. B. Small Co.* v. *Amer. Sugar Refining Co.*, 1925, 267 U. S. 233, 45 S. Ct. 295, where an act prohibiting the exaction of unreasonable prices for necessaries was held void because indefinite, whether taken as a civil regulation or as a criminal statute. It is entirely impossible to define who an alien is who is not in the classes (a) to (j) "but in whose case circumstances of a similar character may be found to exist." The requirements of definiteness established by the courts with reference to statutes must, *a fortiori*, be applied with increased strictness to the rules and regulations of administrative agencies.

In the present case we noticed that Congress in 8 U. S. C. 137 has defined with definiteness the classes of aliens excludable for political reasons. Section 175.53 (k) now adds a new class of excludable persons. Creating new classes of excludable persons is in itself beyond administrative powers.

This new class of excludable aliens is in addition improperly, i.e. too vaguely, defined, and so comprehensive that it makes 8 U. S. C. 137 illusory.

Summing up the previous argument, the conclusion is reached that the relator falls under none of the classes of aliens whose entry pursuant to Section 175.53 shall be deemed prejudicial to the United States on the grounds that sections (a) to (j) do not apply and that section (k) is without meaning and beyond statutory power.

Sections 175.54 to 175.56 are not applicable.

Section 175.57 (a) is invoked by the court below as the basis for the proceeding applied to the exclusion of this alien. This section (*infra*, p. 68) purports to authorize the temporary exclusion of any alien if "it appears that he is or may be excludable under any of the categories set forth in section 175.53". Such alien, the section further provides, "shall be excluded and deported unless the Secretary of State is satisfied that the admission of the alien would not be prejudicial to the interests of the United States."

In the present case, the Secretary of State was not consulted. The government return expressly states (18):

> "2. On October 6, 1948, the Assistant Commissioner of Immigration and Naturalization recommended that the relator's temporary exclusion be made permanent without the right of a hearing be-

fore a Board of Special Inquiry under the provisions of 8 C. F. R. 175.57. On the same day, this recommendation was adopted by the Attorney General, who ordered relator excluded from the United States."

It appears that the Attorney General acted on his own, acted beyond the powers that his own rules purported to give him. On this reasoning alone the exclusion order herein must fall.

That under Rule 175.57 (a)—if indeed it shall not be invalid for indefiniteness—the Secretary of State and not the Attorney General must exclude the alien, has been held in a recent decision of Judge Holland of the U. S. District Court for Florida, in the matter of Visic (Nov. 1948). This decision is annexed hereto, pp. 69-72, ~~below,~~ as part of Appendix II.

The power to exclude aliens vested under these rules in the Secretary of State has recently been transferred to the Attorney General. See Proclamation of the President No. 2850, of August 19, 1949, *infra* p. 62. This change of rules can obviously not apply to this appellant, who was excluded before proclamation No. 2850 went into effect. The constitution condemns *ex post facto* laws.

Section 175.57 (b) purports to give the Attorney General power to deny the alien a hearing by a board of special inquiry and an appeal therefrom "if the Attorney General determines that he is excludable under one of the categories set forth in section 153.53 on the basis of information of a confidential nature, the disclosure of which would be prejudicial to the public interest."

This section has been violated in several ways. First, as shown before, appellant is not being excluded under, and does not belong to any, of the classes set forth in section

175.53). Secondly, there is no determination by the Attorney General that the appellant is excludable on confidential information, the disclosure of which would be contrary to the public interest. Inasmuch as the Attorney General wrote about this matter to his friend "Joe" (70-75), it would seem that he did not deem the matter confidential. Thirdly, there is no statutory basis for section 175.57, which is the arbitrary and unauthorized product of government officials desirous of legislating.

The conclusion is that there is no basis for the proceeding adopted herein by the government, that the bypassing of the boards of special inquiry was unauthorized, and that the writ herein should have been sustained because the procedure prescribed by law to determine the alien's admissibility was not followed.

C. 8 C. F. R. 175.53 to 175.57 do not apply to war brides and are unauthorized by statute.

The courts below held that sections 175.53 to 175.57, Title 8, C. F. R. are authorized by 22 U. S. C. 223 and Presidential Proclamation 2523. It is submitted that the learned judges are in error. 22 U. S. C. 223, set forth verbatim *infra* p. 42, is the so-called Passport Act of 1918, as amended. It applies, as its language shows, to times of war. Relator argues that, as far as she is concerned, the war is at an end. Reference is made to that part of the War Bride Act which says that

> "For the purpose of this Act, the Second World War shall be deemed * * * to have ceased upon the termination of hostilities as declared by the President * * *".

The President declared the termination of hostilities by proclamation 2714 on December 31, 1946 (*infra*, p. 61). From this fact it is deduced that with respect to war brides

no war powers can be invoked by the government. No war bride, since Dec. 31, 1946, can be excluded under powers flowing from the Passport Act of 1918.

Furthermore, 22 U. S. C. 223 (a) authorize the President to prescribe "reasonable rules and regulations." It does not authorize the government to invent additional exclusion grounds. Inasmuch as 8 C. F. R. 175.53 (k) and 8 C. F. R. 175.57 establish new grounds for exclusion, they are void. The Attorney General, as he purported to do, had no power to make excludable such aliens "in whose case circumstances of a similar character may be found" (175.53 (k)) and his attempt to act in this case under this provision is contrary to statute, not authorized by 22 U. S. C. 223.

Section 175.57 therefore is no "reasonable" rule or regulation. It does not carry the statute into effect; it is an attempt to legislate.

The Attorney General was not authorized by 22 U. S. C. 223 (a) to abolish the statutory boards of special inquiry. He was given no power to supersede the Immigration Laws.

The President under 22 U. S. C. 223 (a) issued Proclamation 2523 (*infra*, p. 55). Said proclamation under (3), second paragraph states (*infra*, p. 58):

> "No alien shall be permitted to enter the United States if it appears to the satisfaction of the Secretary of State that such entry would be prejudicial to the interests of the United States as provided in the rules and regulations hereinbefore authorized to be prescribed by the Secretary of State, with the concurrence of the Attorney General."

It is apparent that the President gave the power to exclude under said proclamation to the Secretary of State and

not to the Attorney General and that the Attorney General's acts in this matter are not authorized by said Proclamation. If the government desires to argue that 8 C. F. R. 175.53—175.57 were promulgated by the Secretary of State and the Attorney General jointly, the answer is that the Secretary of State has no power to delegate his powers to the head of another government agency, and that in fact section 175.57 (a) did not delegate the power to exclude to the Attorney General, but retained it with the Secretary of State. Judge Holland in the Visic decision* came to the same conclusion (*infra*, pp. 69-72). The recent change of this regulation by Proclamation 2850 (*infra*, p. 62) cannot impair the status of appellant *ex post facto*.

It has been pointed out above that section 5 of the War Bride Act, *infra*, p. 50, provides that for the purpose of this act the second world war has been terminated with the presidential proclamation of cessation of hostilities, on Dec. 31, 1946. From this it is deduced that 22 U. S. C. 223 cannot be applicable to a war bride, for section 223 expressly holds that the powers therein defined are granted solely:

(1) When the United States is at war;

(2) During the existence of the emergency proclaimed by the President on May 27, 1941;

(3) Whenever there exists a state of war between two or more states.

The War Bride Act shows that as to war brides and their right to enter we are to be deemed at peace. The emergency proclaimed by the President on May 27, 1941, was terminated by the outbreak of the second world war

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*Visis v. *Dever*, D. C. S. D. Fla., 1948, No. 2712 —— M —— Civil, *infra*, p. 69.

into which the emergency merged. There is no war between two or more states in existence. For this reason again 22 U. S. C. 223 cannot be applicable to this case.

The courts below rejected this argument on the ground that this Court held in *Ludecke* v. *Watkins*, 1948, 335 U. S. 160, 68 U. S. 1429, that we are still at war with Germany. It is submitted that the *Ludecke* case is not applicable to the present situation, as Ludecke was not a war bride and the construction of the War Bride Act was not attempted in that case.

Appellant Ellen Knauff should therefore have been given the statutory admission hearing under section 8, U. S. C. 152 and 153.

D. No act of Congress authorizes the Attorney General to exclude aliens without a hearing.

The passport act of 1918 has been in effect for twenty-four years, without being officially interpreted as authorizing the denial of a hearing to arriving aliens. During all this time it was, what the name implies, an enactment authorizing the President to require aliens to present certain documents if they desire to enter.

The 1941 amendment to the Passport Act made no material change. It authorized the President to make a proclamation that it was necessary to impose restrictions and prohibitions in *addition* to those otherwise provided. The President was further given power to make it unlawful for an alien to enter "except under such reasonable rules, regulations, and orders and subject to such limitations and exceptions as the President shall prescribe."

Presidential Proclamation No. 2523 was issued on the basis of the National Emergency proclaimed on May 27,

1941. It requires aliens to present passports and excludes aliens whose entry the Secretary of State finds prejudicial.

It will be observed that no provision is made in the statute or the proclamation for the suspension of hearings heretofore granted for over twenty years under the statute to arriving aliens. In the light of the history of the statute, and the administrative practice thereunder, *in the absence of explicit language, there should be a strong presumption that Congress did not intend to authorize the denial of a hearing to an arriving alien. Congress did not explicitly authorize the President to deny a hearing nor did the Presidential Proclamation contain any such explicit authorization.*

The authorization to deny a hearing is contained in 8 C. F. R. 175.57b. It is submitted that the regulations exceed the authority delegated by the statute and the original proclamation (2523).

Instead of imposing *additional* conditions on entering aliens, the regulations do two things: First, they exclude those already excludable under existing law as in the case of Communists and those who would endanger public safety; secondly, they eliminate hearings under 8 C. F. R. 175.57. If the statute and proclamation authorize the suspension of hearings, then the Secretary of State is authorized to nullify or abrogate all our immigration laws. Nowhere is there any intimation that Congress intended to grant such untrammelled authority. Exclusion hearings are granted when a subversive is denied entry under the Act of October 16, 1918 (8 U. S. C. 137). But where he is suspected of subversion and denied entry under the regulation which incorporates that same statute (8 C. F. R. 175.53) he may be denied a hearing under 8 C. F. R. 175.57(b) on the ground that *ex parte* information against him is confidential.

As recently as April 12, 1948, the United States Court of Appeals for the District of Columbia in the case of *Wilson* v. *Federal Communications Commission*, 170 Fed. 2(d) 793, 802, cited the *Japanese Immigrant* case (*Yamataya* v. *Fisher*), *supra* p. 8, as authority for determining that a hearing was constitutionally required under a section of the Federal Communications Act which did not specifically provide for a hearing.

It is submitted that in the light of a long history affording hearing to immigrants applying for admission to the United States newfangled regulations eliminating hearings should not be tolerated in the absence of express statutory authority. No such express authority is contained in the Passport Act of 1918, as amended. From the cited cases and numerous others to the same effect it is apparent that the construction placed upon the Passport Act and Proclamation 2523 is one which the courts should hold improper on the ground that such construction would render the statute unconstitutional.

E. 22 U. S. C. 223 (Passport Act) and 8 C. F. R. 175.53 to 175.57 are void to the extent that they contain unconstitutional delegations of legislative and executive powers.

The Supreme Court in *A. L. A. Schechter Poultry Corporation* v. *United States*, 295 U. S. 495, 529, 55 S. Ct. 837, 843, laid down the principles governing the Delegation of Legislative Powers as follows:

> "We recently had occasion to review the pertinent decisions and the general principles which govern the determination of this question. *Panama Refining Company* v. *Ryan*, 293 U. S. 388, 55 S. Ct. 241, 79 L. Ed. 446. The Constitution provides that 'All legislative powers herein granted shall be vested in

a Congress of the United States, which shall consist of a Senate and House of Representatives.' Article 1, §1. And the Congress is authorized 'To make all Laws which shall be necessary and proper for carrying into Execution' its general powers. Article 1, §8, par. 18. The Congress is not permitted to abdicate or to transfer to others the essential legislative functions with which it is thus vested. We have repeatedly recognized the necessity of adapting legislation to complex conditions involving a host of details with which the national Legislature cannot deal directly. We pointed out in the Panama Refining Company Case that the Constitution has never been regarded as denying to Congress the necessary resources of flexibility and practicality, which will enable it to perform its function in laying down policies and establishing standards, while leaving to selected instrumentalities the making of subordinate rules within prescribed limits and the determination of facts to which the policy as declared by the Legislature is to apply. But we said that the constant recognition of the necessity and validity of such provisions, and the wide range of administrative authority which has been developed by means of them, cannot be allowed to obscure the limitations of the authority to delegate, if our constitutional system is to be maintained. Id., 293 U. S. 388, page 421, 55 S. Ct. 241, 79 L. Ed. 446."

In application of these principles the court concluded with respect to section 3 of the Recovery Act (541):

"It supplies no standards for any trade, industry, or activity. It does not undertake to prescribe rules of conduct to be applied to particular states of fact determined by appropriate administrative procedure. Instead of prescribing rules of conduct, it authorizes the making of codes to prescribe them.

> For that legislative undertaking, section 3 sets up no standards, aside from the statement of the general aims of rehabilitation, correction, and expansion described in section 1. In view of the scope of that broad declaration and of the nature of the few restrictions that are imposed, the discretion of the President in approving or prescribing codes, and thus enacting laws for the government of trade and industry throughout the country, is virtually unfettered. We think that the code-making authority thus conferred is an unconstitutional delegation of legislative power."

If we examine 22 U. S. C. 223 and the proclamation (2523, *infra*, p. 55) and regulations (175.53 to 175.57 Title 8, C. F. R., *infra*, p. 64) issued thereunder, the conclusion is inescapable that the rule making authority conferred thereby, or assumed thereunder, is an unconstitutional delegation of power.

22 U. S. C. 223 lays down the rule that during a war it shall be unlawful

> "For any alien to * * * enter the United States except under such reasonable rules * * * as the President shall prescribe."

Does this provision authorize the government to prescribe new substantive rules of exclusion and set up a procedure that abolishes the alien's right to a fair hearing and due process of law? This is exactly what the rules attempt to do. While 8 C. F. R. 175.53 (a) refers to persons excludable by act of Congress (8 U. S. C. 137) subsection (k) purports to exclude any alien:

> "who is not within one or more of the classes defined in paragraphs (a) to (j), inclusive, but in

whose case circumstances of a similar character may be found to exist, which render the alien's admission prejudicial to the interests of the United States * * *"

The instant statute merely authorized the imposition of additional conditions upon entry. No standards were set, nor were the functions of the President delineated in any way. We have to look beyond the statute to the Presidential Proclamation to find any standards whatever, and even the standard found there conveys no suggestion as to the limits of the power to exclude aliens or the manner of its exercise. It therefore seems clear that the instant statute falls within the unconstitutional prescription noted above.

There is no definition of the "circumstances of a similar character" in 8 C. F. R. 175.53 (k). Arbitrary action of the executive power is sanctioned in that provision, and the Attorney General claims for himself thereunder the right to do what he pleases. This appellant, a woman, has rendered three and one-half years of faithful services in the British Army, she has served our government for over two years and earned praise and appreciation, but the Attorney General finds a justification of her exclusion in section 175.53 (k). He says that she reported on American personnel assigned to the Civil Censorship division in Germany!

The utter baselessness of this charge has been set forth in the application for re-argument on folios 122 to 125 which need not be repeated here. The personnel of the Civil Censorship Division was no state secret. It was publicized by the Civil Censorship Division itself (Exh. 12, pp. 48 and 49). The Civil Censorship Division has been abolished for a year and a half; during this time the army authorities continued the employment of appellant and are

still willing to employ her; but the Attorney General determines that reporting what everybody knows is an act "similar" to attempting to overthrow the government by force!

Appellant's specific denial that she gave such information to anybody (32) was never weighed in any hearing; appellant's statement that she was the victim "of a foul denunciation by a woman jealous of her husband" found no open ear. The Attorney General overrode all laws of procedure on the basis of section 175.57, which he construes as giving him power to follow his caprice. If indeed the regulations purport to give the Attorney General the powers he is assuming in this case, they are unconstitutional delegations of powers and void.

POINT II

It was error on the part of the courts below to permit the appellee to fustrate appellant's efforts to institute and carry through naturalization proceedings.

One of the independent grounds on which the writ of habeas corpus in this case was sought to be sustained was that relator filed her preliminary form for petition for naturalization on November 23, 1948 (125, and Ex. 14, p. 51), but that respondent failed and refused to process the same and by confining her to Ellis Island denied her admission to the naturalization court (126).

The courts below disposed of this issue by deciding that there is no right to citizenship until the petitioner is lawfully in the country (160). The courts below therefore denied petitioner's demand to direct the respondent to call the relator for an immediate hearing in which she may formally file the petition (127).

It is submitted that the learned judges are in error.

A. The appellant is entitled to immediate naturalization.

The legal basis for appellant's demand for naturalization is section 312 of the Nationality Act of 1940 (8 U. S. C. 712) reading:

> "An Alien, whose spouse is (1) a citizen of the United States, (2) in the employment of the Government of the United States, or of an American institution of research recognized as such by the Attorney General, or an American firm or corporation engaged in whole or in part in the development of foreign trade and commerce of the United States, or a subsidiary thereof, and (3) regularly stationed abroad in such employment, and who is (1) in the United States at the time of naturalization, and (2) declares before the naturalization court in good faith an intention to take up residence within the United States immediately upon the termination of such employment abroad of the citizen spouse, may be naturalized upon compliance with all requirements of the naturalization laws, with the following exceptions:
>
> (a) No declaration of intention shall be required; and
>
> (b) No prior residence within the United States or within the jurisdiction of the naturalization court or proof thereof shall be required. Oct. 14, 1940, c. 876, Title I, Subchap. III, Sec. 312, 54 Stat. 1145."

It is apparent on the face of this section 312 that appellant qualifies for immediate naturalization. Her husband is in the employ of the U. S. government abroad. Appellant is in the United States; she desires to declare her intention

to take up residence. All requirements of the statute are met; there is no reason discernible why relator should be refused her day in court on her naturalization petition.

That appellant "is" in the United States is doubly clear since her release from custody upon direction of Mr. Justice Jackson.

The naturalization procedure is set forth in the Nationality Act of 1940.

Sec. 301 (8 U. S. C. 701) provides:

> "(a) Exclusive jurisdiction to naturalize persons as citizens of the United States is hereby conferred upon the following specified courts: District Courts of the United States * * * The jurisdiction of all the courts herein specified to naturalize persons shall extend only to such persons resident within the respective jurisdictions, except as otherwise specified provided in this Act.
>
> * * * * *
>
> (d) A person may be naturalized as a citizen of the United States in the manner and under the conditions prescribed in this Act, and not otherwise."

It should be pointed out at this time that the second sentence of section 301 (a) is not in the way of appellant's petition, for section 312 (*supra*, p. 31) expressly provides that "(b) no prior residence within the United States or within jurisdiction of the naturalization court or proof thereof shall be required." That appellant does not reside within the jurisdiction of the District Court for the Southern District of New York is therefore no reason not to process the petition or to deny it.

Sec. 307 (a) Nat. Act (8 U. S. C. 707a) provides:

> "(a) No person, except as hereinafter provided in this Act, shall be naturalized unless such petitioner, (1) immediately preceding the date of filing the petition for naturalization has resided continuously within the United States for at least five years and within the State in which the petitioner resided at the time of filing the petition for at least six months, (2) has resided continuously within the United States from the date of the petition up to the time of admission to citizenship, and (3) during all the periods referred to in this subsection has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States. (54 Stat. 1142; 8 U. S. C. 707.)"

These requirements again are dispensed with for aliens spouses of citizens employed by our government and stationed abroad, as section 312 shows.

The procedure to be followed in naturalization matters is set forth in section 327 as of the Nationality Act.

The preliminary examination of the applicant for naturalization is in the hands of the Commissioner of Immigration. Section 327 (b) of the Nationality Act (8 U. S. C. 727 (b) provides:

> "(b) The Commissioner, with the approval of the Attorney General, shall make such rules and regulations as may be necessary to carry into effect the provisions of this chapter and is authorized to prescribe the scope and nature of the examination of petitioners for naturalization as to their admissibil-

> ity to citizenship for the purpose of making appropriate recommendations to the naturalization courts. Such examination, shall be limited to inquiry concerning the applicant's residence, good moral character, understanding of and attachment to the fundamental principles of the Constitution of the United States, and other qualifications to become a naturalized citizen as required by law, and shall be uniform throughout the United States (54 Stat. 1151; 8 U. S. C. 727).

With respect to this provision it should be mentioned that the Commissioner made the Rules and Regulations. They are contained in sections 363.1 to 363.4, Title 8, C. F. R. Sections 363.3 and 363.4 of said rules provide:

> "363.3. Certificate of arrival to be filed with petition for naturalization. Each petitioner for naturalization who entered the United States after June 29, 1906, shall, unless specifically exempted by the Nationality Act of 1940 from the requirement of a certificate of arrival, file with his petition for naturalization a certificate of arrival issued in accordance with §363.1. Such certificate of arrival shall be filed with the petition for naturalization at the time the petition is filed. The certificate of arrival issued to support a declaration of intention in accordance with §363.2, may be used in support of the petition for naturalization. Nationality Act of 1940, sec. 332 (c), 54 Stat. 1156.)"

> "363.4. Petitioners who are exempt from requirement of certificate of arrival. The following persons may file petitions for naturalization without the issuance of a certificate of arrival: (a) persons who entered the United States for permanent residence on or prior to June 29, 1906; and (b) petitioners under

sections 317 (a) (b) (c), 318, 322, 323, 324, and 325 of the Nationality Act of 1940. (Nationality Act of 1940, secs. 317 (a) (b) (c), 318, 322, 323, 324, 325 and 332 (c), 54 Stat. 1146, 1147, 1148-1150, 1156.)"

It is quite obvious, on the basis of these rules, why the appellee refused to process the present petition, for the appellant is not exempted by said rules from the procurement of a certificate of arrival, section 312 of the Nationality Act not being mentioned in section 363.4 of C. F. R.

It is submitted that while this regulation explains why the appellee looks with disfavor at appellant's application for citizenship, his refusal to process this application is not made legal thereby. The regulation is not in harmony with the statute and therefore is without legal authority under section 727 (b) which expressly provides that but such regulations shall be made "as may be necessary to carry into effect the provisions of this chapter." The regulation, in leaving out section 312 in 8 C. F. R. 363.4, does not carry the statute into effect.

For the reason set forth the appellant is entitled to her day in court and the appellee should be directed to process her petition for naturalization so that the case may be calendared and appellant bring proof of her good moral character, loyalty and attachment to our institutions. Where the Immigration Service arbitrarily refuses to bring a petition for naturalization before the court, the court has power to order it to do so:

Czuczka v. *Rifkind*, 1947, 160 F. (2d) 308; See also Sections 333 and 334 Nationality Act (733, 734 of 8 U. S. C.).

The question here raised, whether lawful entry is a prerequisite of applying for citizenship pursuant to section

312 Nationality Act, has never been decided by the courts. It ought to be mentioned however that an opinion exists which bears the name of the present Justice of the Supreme Court, the Honorable Robert H. Jackson, who rendered said opinion when he was Attorney General. (Opinions of the Attorney General Vol. 40, No. 29, *infra*, p. 73). The Court will notice that this opinion comes to a conclusion opposite to the one here reached and in harmony with the decisions below.

Despite the great respect which the opinion of so eminent a jurist as Mr. Justice Jackson commands, it should be pointed out that he did not have the benefit of argument of counsel when writing his opinion and that he was in the position, as Attorney General, that the Department of Justice had already taken a stand on the point in controversy by promulgating the Rule in 8 C. F. R. 363.4 which was discussed above. The Department of Justice, of course, had a tendency to justify the position previously taken. A final determination of the problem can only be made by this court.

The main point in the Attorney General's reasoning is that section 332 of the Nationality Act sets forth in general as a requirement for naturalization "proof of legal entry in the United States for permanent residence." It seems necessary to take issue with this premise. Section 332 of the Nationality Act (*infra*, p. 44) contains a sample of a petition for naturalization, together with the direction that the "petition shall contain *substantially** the following averments by such applicant". The point is here made that the list of items set forth in §332 that the petition must contain is that of a normal naturalization case. Item 14, e. g., contains the statement that the applicant declared his intention to become a citizen of the United Sates on a certain date. Since section 312 Nationality Act exempts the relator herein from the requirement of "first papers", they are not

*Emphasis supplied.

necessary in her case. Similarly item 11, referring to "lawful entry for permanent residence" is not applicable, because section 312 merely demands a declaration of the applicant that she intends "to take up residence within the United States immediately upon termination of such employment abroad of the citizen spouse." Section 312 expressly holds therefore that the applicant thereunder is *not* expected to take up permanent residence. Sec. 312, thereby expressly drops the requirement of item 11 of sect. 332 as far as applicants in appellant's position are concerned.

Mr. Attorney General Jackson further argues that "the other exemptions in section 312 being expressly granted," it is his opinion that an exemption from lawful entry should not be read into the act by implication.

The answer to this is that section 312, not by implication, but by most pertinent direct language exempts the alien spouse from the requirement of legal entry by requiring only that she "is (1) in the United States at the time of the naturalization." There is no doubt that petitioner "is in the United States." Said section further holds "no prior residence within the United States * * * or proof thereof shall be required." If now a certificate of legal entry for permanent residence should be considered a necessary requirement for petitions for naturalization under §312 Nat. Act, proof would be required of previous residence, which the statute expressly rules out. If no prior residence is required at the time of the application, it can only mean that applicant need not be a resident at the time of the application and that all that is necessary is that, somehow, she is actually in the United States. Appellant meets this requirement.

Certificates of arrival are issued only to persons entering the United States for permanent residence (§§328(c), 329, Nat. Act., infra, pp. 41, 42). It is contended, e. g., that an alien spouse of a government employee stationed abroad is eligible for immediate naturalization when in transit through the United States or in the United States as a visitor. §312 is expressly worded to meet this condition. It is therefore fanciful and arbitrary and contrary to law to require from applicants under §312 certificates of arrival.

B. The appellant is entitled to immediate processing of her preliminary petition for naturalization.

It has been stated at length that the appellant is entitled to immediate naturalization. However, his quesion need not be decided at the present stage of her case. This court, it is hoped, will agree with the legal reasoning under point II B, supra, but if it does not, it seems to be unquestionable that a legitimate legal issue exists. It is contended that the administrative agencies have no right and no power to decide such legal issue by passive resistance to the preliminary petition of this appellant, i.e., by simply refusing to process the petition and to give appellant a chance of raising the legal issues in the District Court. Appellant therefore prayed the courts below to direct the District Director of Naturalization to calendar her naturalization case so that appellant may file her petition. The courts and not the appellee, will then finally pass upon the legal issues of appellant's petition for naturalization.

These deductions are in harmony with judicial determination. Thus it was held in *Tutun* v. *U. S.*, 1926, 270 U. S. 568, 46 S. Ct. 425, 427:

> "The opportunity (to become a citizen) having been conferred by the Naturalization Act (34 Stat.

596), there is a statutory right in the alien to submit his petition and evidence to a court, to have that tribunal pass upon them, and, if the requisite facts are established, to receive the certificate."

See also *Schwimmer* v. *United States*, 27 F. (2) 742, 744.

Reference is further made to the decision of the District Court for the Northern District of California, in re Linklater, 3 F (2) 691, where it was held by Partridge, D. J., (695):

> "Lastly, the naturalization department makes certain suggestions as to its powers. I do not feel called upon to discuss those questions, except to negative the claim that such an examiner is a "master." His powers are clearly administrative, and not judicial in any sense. I am equally clear that such examiners have no power or authority to prevent a man from filing his petition under any circumstances."

C. The naturalization issue may be raised in this habeas corpus proceeding.

It is obvious that the naturalization proceeding gives the appellant an opportunity to prove her good moral character and her loyalty to this country in court, before a learned and impartial judge, while the admission procedure takes place before administrative agencies that are composed of men less learned and less gifted than our judges. If appellant can convince the judge of the naturalization court of her loyalty, her detention which at once be ended upon her becoming a citizen of the United States. The appellee, by frustrating the progress of the naturalization procedure, therefore deprives the appellant of one of the means provided for her by law to end her detention. Habeas Corpus is the time honored remedy to obtain relief from illegal detention.

It is further contended that where a right to naturalization exists and at the same time an alien is deportable, the naturalization proceeding takes precedent and must be determined before any deportation may take place. The court proceeding, being of higher dignity should not be frustrated by the administrative agencies."

This has been held in U. S. ex rel. *Walther* v. *District Director of Immigration and Naturalization*, 1949, 175 F. (2d) 693.

In this case an honorably discharged veteran had petitioned for naturalization. The Immigration and Naturalization Service, for reasons not disclosed in the decision, was unimpressed by the distinguished war services of an alien and ordered the veteran deported for illegal entry. The Court of Appeals for the Second Circuit, by Frank C. J., held (694):

> "Appellee on oral argument in this court, did not dispute appellant's contention that that section removes an illegal entry as a barrier to naturalization. We do not now so decide. But we think that that question should be canvassed in the naturalization proceedings. If that section is held to remove that barrier, and if appellant otherwise satisfies the the provisions of the statute, the deportation order should be quashed.
>
> Accordingly, we vacate the order dismissing the habeas corpus writ; the habeas corpus petition is to remain undecided in the district court until the naturalization proceedings is concluded; the deportation order and warrant are meanwhile stayed."

It is respectfully submitted that the above decision is squarely applicable to the facts of this case. Mrs. Knauff is

sought to be deported before obtaining a naturalization hearing. The latter should be carried through before her deportability can be determined.

CONCLUSION

The decision below should be reversed, the writ sustained, appellant released from custody and the appellee directed to grant the appellant admission hearings before a Board of Special Inquiry and to process the petition for naturalization so that it may come up for an early hearing in the United States District Court for the Southern District of New York.

New York City, September 20, 1949.

Respectfully submitted,

GUNTHER JACOBSON,
Attorney for Appellant.

APPENDIX I

Statutes and Regulations

(Shorter citations of other statutes are set forth verbatim at the proper place in the points below.)

Passport Act of 1918 as amended in 1941, Title 22, U. S. C., section 223:

> "§223. *War-time restrictions generally.* When the United States is at war or during the existence of the national emergency proclaimed by the President on May 27, 1941, or as to aliens whenever there exists a state of war between, or among, two or more states, and the President shall find that the interests of the United States require that restrictions and prohibitions in addition to those provided otherwise than by sections 223-226 of this title be imposed upon the departure of persons from their entry into the United States, and shall make public proclamation thereof, it shall, until otherwise ordered by the President or Congress, be unlawful (as amended June 21, 1941, c. 210, § 1, 55 Stat. 252)
>
> "(a) For any alien to depart from or enter or attempt to depart from or enter the United States except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President shall prescribe;"
>
> • • •

Sections 328 and 329 Nationality Act of 1940 (8 U. S. C. 728, 729).

Sec. 328. (a) The Commissioner shall cause to be made, for use in complying with the requirements of this chapter,

a registry of each person arriving in the United States after the effective date of this Act, of the name, age, occupation, personal description (including height, complexion, color of hair and eyes, and fingerprints), the date and place of birth, nationality, the last residence, the intended place of residence in the United States, the date and place of arrival of said person, and the name of vessel or other means of transportation, upon which said person arrived. (54 Stat. 1151-1152; 8 U. S. C. 728.)

REGISTRY OF ALIENS WHERE NO RECORD OF ADMISSION FOR PERMANENT RESIDENCE, ENTRY PRIOR TO JULY 1, 1924

(b) Registry of aliens at ports of entry required by subsection (a) of this section may be made as to any alien not ineligible to citizenship in whose case there is no record of admission for permanent residence, if such alien shall make a satisfactory showing to the Commissioner, in accordance with regulations prescribed by the Commissioner, with the approval of the Attorney General, that such alien—

(1) Entered the United States prior to July 1, 1924;

(2) Has resided in the United States continuously since such entry;

(3) Is a person of good moral character; and

(4) Is not subject to deportation. (54 Stat. 1152; 8 U. S. C. 728.)

RECORD OF REGISTRY DEEMED LAWFUL ADMISSION FOR PERMANENT RESIDENCE

(c) For the purposes of the immigration laws and naturalization laws an alien, in respect of whom a record of registry has been made as authorized by this section, shall

be deemed to have been lawfully admitted to the United States for permanent residence as of the date of such alien's entry. (54 Stat. 1152; 8 U. S. C. 728.)

CERTIFICATE OF ARRIVAL
ISSUED UNDER REGULATIONS UPON APPLICATION TO THE COMMISSIONER

SEC. 329. (a) The certificate of arrival required by this chapter may be issued upon application to the Commissioner in accordance with regulations prescribed by the Commissioner, with the approval of the Attorney General, upon the making of a record of registry as authorized by section 328 of this Act. (54 Stat. 1152; 8 U. S. C. 729.)

LAWFUL ENTRY FOR PERMANENT RESIDENCE REQUISITE FOR VALID DECLARATION OF INTETION

(b) No declaration of intention shall be made by any person who arrived in the United States after June 29, 1906, until such person's lawful entry for permanent residence shall have been established, and a certificate showing the date, place, and manner of arrival in the United States shall have been issued. It shall be the duty of the Commissioner or a Deputy Commissioner to cause to be issued such certificate. (54 Stat. 1152; 8 U. S. C. 729.)

Sec. 332 Nationality Act of 1940, Sec. 732, Title 8, U. S. C.

SEC. 332. (a) An applicant for naturalization shall, not less than two nor more than seven years after such declaration of intention has been made, make and file in the office of the clerk of a naturalization court, in duplicate, a sworn petition in writing, signed by the applicant in the applicant's own handwriting, if physically able to write, and duly verified by witnesses, which petition shall contain substantially the following averments by such applicant. (54 Stat. 1154; 8 U. S. C. 732.)

CONTENTS OF PETITION FOR NATURALIZATION

(1) My full, true and correct name is ..... (full, true name, without abbreviation, and any other name which has been used, must appear here).

(2) My present place of residence is ..... (number and street), ... (city or town), ... (county), ... (State).

(3) My occupation is .....

(4) I am ..... years old.

(5) My personal description is: Sex .....; color ....., complexion ....., color of eyes ....., color of hair ....., height ..... feet ..... inches, weight ..... pounds; visible distinctive marks .....; race .....; present nationality .....

(6) I was born on ..... (month, day and year), in ..... (city or town), ... (county, district, province, or state), ... (country).

(7) I am ..... married; the name of my wife or husband is .....; we were married on ..... (month, day, and year), at ..... (city or town), ... (state or country); he or she was born at .....(city or town), ... (county, district, province, or state), ... (country), on ..... (month, day, and year); entered the United States at..... (city or town), ... (State), on ..... (month, day, and year), for permanent residence in the United States, and now resides at ..... (city or town), ... (state or country).

(8) I have ..... children; and the name, sex, date, and place of birth, and present place of residence of each of said children who is living are as follows: .....

(9) My last place of foreign residence was ..... (city or town), ... (county, district, or province), ... (country).

(10) I emigrated to the United States from ..... (city or town), ... (country).

(11) My lawful entry for permanent residence in the United States was at ..... (city or town), ... (State), under the name of ....., on ..... (month, day, and year), on the ..... (name of vessel or other means of conveyance), as shown by the certificate of my arrival attached to this petition.

(12) I have ..... been absent from the United States, having departed therefrom on ..... (dates of departures), from the port or ports of ....., upon the following vessels or other means of conveyance: ..... (names of vessels or conveyances upon departures); and returned to the United States on ..... (dates of return to the United States), at the port or ports of ...., upon the following vessels or other means of conveyance: ..... (names of vessels or conveyances upon return).

(13) I have resided continuously in the United States of America for the term of five years at least immediately preceding the date of this petition, to wit, since ....., and continuously in the State in which this petition is made for the term of six months at least immediately preceding the date of this petition, to wit, since .....

(14) I declared my intention to become a citizen of the United States on ..... (month, day, and year), in the ..... (name of court) Court of ....., at ..... (city or town), ... (State).

(15) I have ..... heretofore made petition for naturalization number ....., on ..... (month, day, and year), at ..... (city or town), ... (county), ... (State), in the ..... (name of court), and such petition was dismissed or denied by that Court for the following reasons and causes to wit: ....., and the cause of such dismissal or denial has since been cured or removed.

(16) I am not an anarchist, nor a disbeliever in or opposed to organized government, nor a member of or affiliated with any organization or body of persons teaching disbelief in or opposition to organized government.

(17) I am attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States.

(18) It is my intention in good faith to become a citizen of the United States, and to reside permanently therein.

(19) It is my intention to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which at this time I am a subject or citizen.

(20) Attached hereto and made a part of this, my petition for naturalization, are my declaration of intention to become a citizen of the United States (if such declaration of intention be required by the naturalization law), a certificate of arrival from the Immigration and Naturalization Service of my said lawful entry into the United States

for permanent residence (if such certificate of arrival be required by the naturalization law), and the affidavits of the two verifying witnesses required by law.

(21) Wherefore, I, petitioner for naturalization, pray that I may be admitted a citizen of the United States of America, and that my name be changed to .....

(22) I, aforesaid petitioner, being duly sworn, depose and say that I have (read) (heard read) this petition and know that the same is true of my own knowledge except as to matters herein stated to be alleged upon information and belief, and that as to those matters I believe it to be true; and that this petition is signed by me with my full, true, and correct name. So help me God: ..... (full, true, and correct name of petitioner). (54 Stat. 1154-1156; 8 U. S. C. 732.)

AVERMENTS AND PROOF OF OTHER MATERIAL FACTS REQUIRED

(b) The applicant's petition for naturalization, in addition to the averments required by subsection (a) of this section, shall include averments of all other facts which may be material to the applicant's naturalization and required to be proved upon the hearing of such petition. (54 Stat. 1156; 8 U. S. C. 732.)

CERTIFICATE OF ARRIVAL AND DECLARATION OF INTENTION TO BE ATTACHED AND MADE A PART OF PETITION AT TIME OF FILING

(c) At the time of filing the petition for naturalization there shall be filed with the clerk of court a certificate from the Service, if the petitioner arrived in the United States after June 29, 1906, stating the date, place, and manner of petitioner's arrival in the United States, and the declaration of intention of such petitioner, which certificate and declaration shall be attached to and made a part of said petition. (54 Stat. 1156; 8 U. S. C. 732.)

FINAL COURT ACTION ON PETITIONS FOR NATURALIZATION ONLY ON COURT RULING

(d) Petitions for naturalization may be made and filed during the term time or vacation of the court and shall be docketed the same day as filed, but final action thereon shall be had only on stated days, to be fixed by rule of the court. (54 Stat. 1156; 8 U. S. C. 732.)

Aliens-Spouses and Minor Children of Citizens in Armed Forces

(War Bride Act)

CHAPTER 591—PUBLIC LAW 271

[H. R. 4857]

An Act to expedite the admission to the United States of alien spouses and alien minor children of citizen members of the United States armed forces.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

Notwithstanding any of the several clauses of section 3 of the Act of February 5, 1917, excluding physically and mentally defective aliens, and notwithstanding the documentary requirements of any of the immigration laws or regulations, Executive orders, or Presidential proclamations issued thereunder, alien spouses or alien children of United States citizens serving in, or having an honorable discharge certificate from the armed forces of the United States during the Second World War shall, if otherwise admissible under the immigration laws and if application for admission is made within three years of the effective date

of this act, be admitted to the United States: Provided, That every alien of the foregoing description shall be medically examined at the time of arrival in accordance with the provisions of section 16 of the Act of February 5, 1917, and if suffering from any disability which would be the basis for a ground of exclusion except for the provision of this Act, the Immigration and Naturalization Service shall forthwith notify the appropriate public medical officer of the local community to which the alien is destined: PROVIDED FURTHER, That the provisions of this Act shall not affect the duties of the United States Public Health Service so far as they relate to quarantinable diseases.

SEC. 2. Regardless of section 9 of the Immigration Act of 1924, any alien admitted under section 1 of this Act shall be deemed to be a nonquota immigrant as defined in section 4 (a) of the Immigration Act of 1924.

SEC. 3. Any alien admitted under section 1 of this Act who at any time returns to the United States after a temporary absence abroad shall not be excluded because of disability or disabilities that existed at the time of his admission.

SEC. 4. No fine or penalty shall be imposed under the Act of February 5, 1917, except those arising under section 14, because of the transportation to the United States of any alien admitted under this Act.

SEC. 5. For the purpose of this Act, the Second World War shall be deemed to have commenced on December 7, 1941, and to have ceased upon the termination of hostilities as declared by the President or by a joint resolution of Congress.

Approved December 28, 1945.

CHAPTER 338—PUBLIC LAW 552 OF 1948
[1878]

An Act to amend the immigration laws to deny admission to the United States of aliens who may be coming here for the purpose of engaging in activities which will endanger the public safety of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

Section 1 (a) of the Act of October 16, 1918, as amended (40 Stat. 1012; 41 Stat. 1008-9; 54 Stat. 673; 8 U. S. C., 137), is further amended by inserting the following clause immediately after the clause "Aliens who are anarchists;": "or aliens who the Attorney General knows or has reason to believe seek to enter the United States for the purpose of engaging in activities which will endanger the public safety of the United States".

Approved May 25, 1948.

LEGISLATIVE HISTORY OF PUBLIC LAW 552 OF 1948

Senate Report No. 1199, Apr. 30, 1948

[To accompany H.R. 1878]

House Report No. 1286, Jan. 29, 1948

[To accompany H.R. 1878]

The Senate Report repeats in substance the House Report

Senate Report No. 1199

The Committee on the Judiciary, to whom was referred the Bill (H. R. 1878) to amend the immigration laws to deny admission to the United States of persons who may be coming here for the purpose of engaging in activities which will endanger the public safety of the United States, do now report the bill favorably to the Senate with amendments, and recommend that the bill as amended do pass.

Purpose of the Bill

The purpose of the bill is to give the Attorney General the same power to exclude aliens who might be coming to the United States for the purpose of engaging in activities which would endanger the public safety as is presently vested in the Secretary of State to refuse visas to the same class of persons coming to the United States.

The purpose of the amendments is to make it clear that the power to be exercised under the bill is related to aliens only and not to persons other than aliens. It is highly improbable that the power vested under the terms of the bill

could under the Constitution of the United States be used to exclude citizens.

Statement of Facts

The pertinent facts which prompt the passage of the bill are set forth in a letter dated June 20, 1947, from the then assistant to the Attorney General, to the chairman of the Committee on the Judiciary of the House of Representatives, which letter reads as follows:

June 20, 1947.

Hon. Earl C. Michener,
Chairman, Committee on the Judiciary,
House of Representatives,
Washington, D. C.

My Dear Mr. Chairman: This is in response to your request for the views of the Department of Justice relative to a bill (H.R. 1878) which would amend the immigration laws to exclude from admission to the United States persons who the Attorney General knows or has reason to believe seek to enter the country for the purpose of engaging in activities which would endanger the public safety.

Under existing law (22 U. S. C. 228), whenever an American diplomatic or consular officer knows or has reason to believe that an alien seeks to enter the United States for the purpose of engaging in activities which will endanger the public safety, he must refuse to issue to such alien an immigration visa or any other document entitling the alien to present himself for admission into the country. However, if the alien succeeds in concealing such purpose from the diplomatic or consular officer and obtains a visa or other travel document, he cannot legally be denied admission on the ground of his purpose after he reaches the United States.

The bill under consideration would correct this apparent deficiency in the immigration laws, and, subject to the following suggestion, the Department recommends its enactment.

The bill provides for the insertion of its amending clause before specific language contained in section 3 of the act of February 5, 1917 (39 Stat. 875), which language does not appear to have been retained verbatim in the acts of October 16, 1918 (40 Stat. 1012), June 5, 1920 (41 Stat. 1008), or subsequent acts, which have been codified under 8 U. S. C. 137, relating to the exclusion of anarchists and similar classes of undesirable aliens.

For purpose of clarity in construction, therefore, it is suggested that the bill be amended after its enacting clause to read as follows:

> "That section 1 of the act of June 5, 1920 (41 Stat. 1008), as amended, is further amended by inserting the following clause immediately after the clause 'Aliens who are anarchists': 'or persons who the Attorney General knows or has reason to believe seek to enter the United States for the purpose of engaging in activities which will endanger the public safety of the United States.' "

The Director of the Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely yours,

DOUGLAS W. MCGREGOR,
The Assistant to the Attorney General.

The committee after consideration of all the facts is of the opinion that the bill (H. R. 1878), as amended, should be enacted and it therefore accordingly so recommends its enactment.

Proclamation No. 2523

CONTROL OF PERSONS ENTERING AND LEAVING THE UNITED STATES

By the President of the United States of America

A Proclamation

Whereas the act of Congress approved on May 22, 1918 (40 Stat. 559), as amended by the act of Congress approved on June 21, 1941 (Public Law 114, 77th Cong., chap. 210, 1st sess., 55 Stat. 252)[1] vests authority in me to impose restrictions and prohibitions in addition to those otherwise provided by law upon the departure of persons from and their entry into the United States when the United States is at war, or during the existence of the national emergency proclaimed by the President on May 27, 1941, or, as to aliens, whenever there exists a state of war between or among two or more states, and when I find that the interests of the United States so require; and

Whereas the national emergency proclaimed by me on May 27, 1941 is still existing; and

Whereas there unhappily exists a state of war between or among two or more states and open hostilities engage a large part of the Eastern Hemisphere; and

Whereas the exigencies of the present international situation and of the national defense require that restrictions and prohibitions, in addition to those otherwise provided by law, be imposed upon the departure of persons from and their entry into the United States, including the Panama Canal Zone, the Commonwealth of the Philippines, and all territory and waters, continental or insular, subject to the jurisdiction of the United States:

NOW, THEREFORE, I, FRANKLIN D. ROOSEVELT, President of the United States of America, acting under and by virtue of the authority vested in me as set forth above, do hereby find and publicly proclaim and declare that the interests of the United States require that restrictions and prohibitions, in addition to those otherwise provided by law, shall be imposed upon the departure of persons from and their entry into the United States, including the Panama Canal Zone, the Commonwealth of the Philippines, and all territory and waters, continental or insular, subject to the jurisdiction of the United States; and I make the following rules, regulations, and orders which shall remain in force and effect until otherwise ordered by me:

(1) After the effective date of the rules and regulations hereinafter authorized, no citizen of the United States or person who owes allegiance to the United States shall depart from or enter, or attempt to depart from or enter, the United States, including the Panama Canal Zone, the Commonwealth of the Philippines, and all territory and waters, continental or insular, subject to the jurisdiction of the United States, unless he bears a valid passport issued by the Secretary of State or, under his authority, by a diplomatic or consular officer of the United States, or the United States High Commissioner to the Philippine Islands, or the chief executive of Hawaii, of Puerto Rico, of the Virgin Islands, of American Samoa, or of Guam, or unless he comes within the provisions of such exceptions or fulfils such conditions as may be prescribed in rules and regulations which the Secretary of State is hereby authorized to prescribe in execution of the rules, regulations, and orders herein prescribed. Seamen are included in the classes of persons to whom this paragraph applies.

(2) No alien shall depart from or attempt to depart from the United States unless he is in possession of a valid permit to depart issued by the Secretary of State or by an officer

designated by the Secretary of State for such purpose, or unless he is exempted from obtaining a permit, in accordance with rules and regulations which the Secretary of State, with the concurrence of the Attorney General, is hereby authorized to prescribe in execution of the rules, regulations, and orders herein prescribed; nor shall any alien depart from or attempt to depart from the United States at any place other than a port of departure designated by the Attorney General or by the Commissioner of Immigration and Naturalization or by an appropriate permit-issuing authority designated by the Secretary of State.

No alien shall be permitted to depart from the United States if it appears to the satisfaction of the Secretary of State that such departure would be prejudicial to the interests of the United States as provided in the rules and regulations hereinbefore authorized to be prescribed by the Secretary of State, with the concurrence of the Attorney General.

(3) After the effective date of the rules and regulations hereinafter authorized, no alien shall enter or attempt to enter the United States unless he is in possession of a valid unexpired permit to enter issued by the Secretary of State, or by an appropriate officer designated by the Secretary of State, or is exempted from obtaining a permit to enter in accordance with the rules and regulations which the Secretary of State, with the concurrence of the Attorney General, is hereby authorized to prescribe in execution of these rules, regulations, and orders.

No alien shall be permitted to enter the United States if it appears to the satisfaction of the Secretary of State that such entry would be prejudicial to the interests of the United States as provided in the rules and regulations hereinbefore authorized to be prescribed by the Secretary of State, with the concurrence of the Attorney General.

(4) No person shall depart from or enter, or attempt to depart from or enter, the United States without submitting for inspection, if required to do so, all documents, articles, or other things which are being removed from or brought into the United States upon or in connection with such person's departure or entry, which are hereby made subject to official inspection under rules and regulations which the Secretary of State in the cases of citizens, and the Secretary of State with the concurrence of the Attorney General in the cases of aliens, is hereby authorized to prescribe.

(5) A permit to enter issued to an alien seaman employed on a vessel arriving at a port in the United States from a foreign port shall be conditional and shall entitle him to enter only in a case of reasonable necessity in which the immigration authorities are satisfied that such entry would not be contrary to the interests of the United States; but this shall not be deemed to supersede the provisions of Executive Order 8429, dated June 5, 1940 concerning the documentation of seamen.

(6) The period of validity of a permit to enter or a permit to depart, issued to an alien, may be terminated by the permit-issuing authority or by the Secretary of State at any time prior to the entry or departure of the alien, provided the permit-issuing authority or the Secretary of State is satisfied that the entry or departure of the alien would be prejudicial to the interests of the United States which it was the purpose of the above-mentioned acts to safeguard.

(7) Except as provided herein or by rules and regulations prescribed hereunder, the provisions of this proclamation and the rules and regulations issued in pursuance hereof shall be in addition to, and shall not be held to repeal, modify, suspend, or supersede any proclamation, rule, regulation, or order heretofore issued and now in effect under the general statutes relating to the immigration of aliens into the United States; and compliance with the provisions of this proclamation or of any rule or regulation which may hereafter be issued in pursuance of the act of May 22, 1918, as amended by the act of June 21, 1941, shall not be considered as exempting any individual from the duty of complying with the provisions of any statute, proclamation, rule, regulation, or order heretofore issued and now in effect.

(8) I direct all departments and agencies of the Government to cooperate with the Secretary of State in the execution of his authority under this proclamation and any subsequent proclamation, rule, regulation, or order promulgated in pursuance hereof. They shall upon request make available to the Secretary of State for that purpose the services of their respective officials and agents. I enjoin upon all officers of the United States charged with the execution of the laws thereof the utmost diligence in preventing violations of the act of May 22, 1918, as amended by the act of June 21, 1941, and in bring to trial and punishment any persons who shall have violated any provisions of such acts.

(9) Paragraph 6, part I, of Executive Order 8766, issued June 3, 1941, is hereby superseded by the provisions of this proclamation and such regulations as may be prescribed hereunder.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

DONE at the city of Washington this 14th day of November in the year of our Lord nineteen hundred and forty-one, and of the Independence of the United States of America the one hundred and sixty-sixth.

[SEAL]

By the President: FRANKLIN D. ROOSEVELT

CORDELL HULL,

Secretary of State.

Proclamation No. 2714

(12 F. R. 1)

CESSATION OF HOSTILITIES OF WORLD WAR II

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

With God's help this nation and our allies, through sacrifice and devotion, courage and perseverance, wrung final and unconditional surrender from our enemies. Thereafter, we, together with the other United Nations, set about building a world in which justice shall replace force. With spirit, through faith, with a determination that there shall be no more wars of aggression calculated to enslave the peoples of the world and destroy their civilization, and with the assistance of Almighty Providence great gains have been made in translating military victory into permanent peace. Although a state of war still exists, it is at this time possible to declare, and I find it to be in the public interest to declare, that hostilities have terminated.

NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, do hereby proclaim the cessation of hostilities of World War II, effective twelve o'clock noon, December 31, 1946.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

DONE at the City of Washington this 31st day of December in the year of our Lord nineteen hundred and forty-six,

and of the Independence of the United States of America the one hundred and seventy-first.

[SEAL]

By the President: HARRY S. TRUMAN.

JAMES F. BYRNES,

The Secretary of State.

Proclamation No. 2850

AMENDMENT OF PROCLAMATION NO. 2523 PRESCRIBING REGULATIONS RELATING TO THE CONTROL OF PERSONS ENTERING OR LEAVING THE UNITED STATES

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA
A PROCLAMATION

WHEREAS Proclamation No. 2523 of November 14, 1941, issued under and by virtue of the authority vested in the President by the act of May 22, 1918, 40 Stat. 559, as amended by the act of June 21, 1941, 55 Stat. 252, prescribes regulations which impose certain restrictions and prohibitions, in addition to those otherwise provided by law, upon the departure of persons from and their entry into the United States; and

WHEREAS I find that the interests of the United States, within the meaning of the said act of June 21, 1941, and by reason of the continued existence of the conditions set forth in section 1 thereof, require that the said proclamation be amended as hereinafter set forth:

NOW THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, acting under and by virtue of

the authority vested in the President by the Act of Congress above mentioned, do proclaim as follows:

1. The said Proclamation No. 2523 is hereby amended so that paragraph numbered (3) thereof, together with the succeeding unnumbered paragraph, shall read as follows:

"(3) (a) After the effective date of the rules and regulations hereinafter authorized, no alien shall enter or attempt to enter the United States unless he is in possession of a valid unexpired permit to enter issued by the Secretary of State or by an appropriate officer designated by the Secretary of State, or is exempted from obtaining a permit to enter, in accordance with rules and regulations which the Secretary of State, with the concurrence of the Attorney General, is hereby authorized to prescribe.

"(b) No permit to enter shall be issued to an alien if it appears to the satisfaction of the issuing officer, or the Secretary of State, that the alien's entry would be prejudicial to the interests of the United States within the meaning of the rules and regulations hereinbefore authorized to be prescribed by the Secretary of State with the concurrence of the Attorney General.

"(c) Notwithstanding the provisions of the foregoing paragraphs (a) and (b), no alien applying for admission, even with a valid permit to enter, shall enter or be permitted to enter the United States if it appears to the satisfaction of the Attorney General that such entry would be prejudicial to the interests of the United States."

2. All existing regulations promulgated under or pursuant to the said Proclamation No. 2523 are hereby ratified and confirmed and shall be construed to have the same effect as if included in such proclamation: *Provided, however,* that nothing contained herein shall be deemed to limit lawful authority to amend or modify such regulations.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

DONE at the City of Washington this 17th day of August in the year of our Lord nineteen hundred and forty-nine, and of the Independence of the United States of America, the one hundred and seventy-fourth.

[SEAL] HARRY S. TRUMAN

By the President:

DEAN ACHESON,
Secretary of State.

Code of Federal Regulations (C. F. R.)

§175.53 TITLE 8—ALIENS AND NATIONALITY

§175.53 *Classes of aliens whose entry is deemed to be prejudicial to the public interest.* The entry of an alien who is within one of the following categories shall be deemed to be prejudicial to the interests of the United States for the purpose of §§175.41 to 175.63, inclusive:

(a) Any alien who belongs to one of the classes specified in the act of October 16, 1918, as amended. (40 Stat. 1012, 41 Stat. 1008-9, 54 Stat. 673; 8 U. S. C. 137)

(b) Any alien who is a member of, affiliated with, or may be active in the United States in connection with or on behalf of a political organization associated with or carrying out policies of any foreign government opposed to the measures adopted by the Government of the United States in the public interest, or in the interest of national defense, or in the interest of the common defense of the countries f the Western Hemisphere, or in the prosecution of the war.

(c) Any alien in possession of, or seeking to procure, unauthorized secret information concerning the plans, preparations, equipment, or establishments for the national defense of, or the prosecution of the war by, the United States.

(d) Any alien engaged in activities designed to obstruct, impede, retard, delay, or counteract the effectiveness of the measures adopted by the Government of the United States for the defense of the United States or for the defense of any other country, or the prosecution of the war.

(e) Any alien engaged in activities designed to obstruct, impede, retard, delay, or counteract the effectiveness of any plans made or steps taken by any country of the Western Hemisphere in the interest of the common defense of the countries of such Hemisphere.

(f) Any alien engaged in organizing, teaching, advocating, or directing any rebellion, insurrection, or violent uprising against the United States.

(g) Any alien engaged in a plot or plan to destroy materials, or sources thereof, vital to the defense of, or the prosecution of the war by, the United States, or to the effectiveness of the measures adopted by the United States for the defense of any other country.

(h) Any alien whose admission would endanger the public safety, as provided in any Executive order issued in pursuance of the act of Congress approved June 20, 1941 (ch. 209, 55 Stat. 252; 22 U. S. C., Sup., 228, 229).

(i) Any alien enemy: *Provided*, That this excluding provision shall not apply to aliens who

(1) Present valid permits to enter issued on or after November 14, 1941, or are exempted under these regulations

from presenting permits to enter and are found to be otherwise admissible under §§ 175.41 to 175.63, inclusive; or

(2) Before September 1, 1939, became and still are citizens or subjects of any foreign country at war with Japan and who have not, since September 1, 1939, and before May 8, 1945, returned to any enemy or enemy-controlled territory; or

(3) Are under 14 years of age; or

(4) Are excepted from the excluding provisions of this subsection in the discretion of the permit-issuing authority or of the Secretary of State.

(j) Any alien found to be, or charged with being, a war criminal by the appropriate authorities of the United States or one of its co-belligerents, or an alien who has been guilty of, or who has advocated or acquiesced in activities or conduct contrary to civilization and human decency on behalf of the Axis countries during the present World War.

(k) Any alien who is not within one or more of the classes defined in paragraphs (a) to (j), inclusive, but in whose case circumstances of a similar character may be found to exist, which render the alien's admission prejudicial to the interests of the United States, which it was the purpose of the act of June 21, 1941 (55 Stat. 252; 22 U. S. C., Sup., 223) to safeguard.

§ 175.54 *Aliens leaving close relatives in certain foreign countries.* The fact that a spouse, or a relative of the first degree of consanguinity, with whom an applicant has maintained close family ties, remains abroad in any country, or in territory under the direct or indirect control of any country, the government of which is found by the Secretary of State to have adopted measures or policies contrary to

the measures or policies adopted by the Government of the United States in the interest of national or international security, may be considered with other evidence in determining whether such applicant may be granted a permit to enter or whether the entry of such applicant should be denied upon the ground that the applicant is within one or more of the categories set forth in § 175.53.

§ 175.55 *Permission to enter the Canal Zone, Guam, American Samoa, and the Philippine Islands.* In addition to the classes of aliens prohibited from entering the United States under the provisions of this chapter, the chief executive officers of the Canal Zone, Guam, American Samoa, and the Philippine Islands are authorized to prescribe, with the approval of the Secretary of State and the Attorney General, additional prohibited classes for the areas under their jurisdiction, and such officers are authorized to issue under the same conditions such regulations as they may deem to be necessary to carry out the provisions of this chapter, including any modifications of a substantive or procedural character.

CROSS REFERENCES: For regulations relating to the control of aliens entering the Canal Zone, issued by the Governor of the Panama Canal, approved by the Secretary of State and by the Attorney General, see Title 35, CFR, 1945, Supp., Part 30.

§ 175.56 *Aliens traveling through areas of military operations or occupation.* In addition to all other applicable restrictions and requirements, in the case of an alien who desires to proceed to the United States and who intends to proceed thereafter to or through any area designated as an area of active military operations or occupation, application shall be made for any military permit required for travel to or through such area. Such application must be approved before a permit to enter is granted.

§ 175.57 *Entry not permitted in special cases.* (a) Any alien, even though in possession of a permit to enter, or exempted under §§ 175.41 to 175.63, inclusive, from obtaining a permit to enter, may be excluded temporarily if at the time he applies for admission at a port of entry it appears that he is or may be excludable under one of the categories set forth in § 175.53. The official excluding the alien shall immediately report the facts to the head of his department, who will communicate such report to the Secretary of State. Any alien so temporarily excluded by an official of the Department of Justice shall not be admitted and shall be excluded and deported unless the Attorney General, after consultation with the Secretary of State, is satisfied that the admission of the alien would not be prejudicial to the interests of the United States. Any alien so temporarily excluded by any other official shall not be admitted and shall be excluded and deported unless the Secretary of State is satisfied that the admission of the alien would not be prejudicial to the interests of the United States.

(b) In the case of an alien temporarily excluded by an official of the Department of Justice on the ground that he is, or may be excludable under one or more of the categories set forth in § 175.53, no hearing by a board of special inquiry shall be held until after the case is reported to the Attorney General and such a hearing is directed by the Attorney General or his representative. In any special case the alien may be denied a hearing before a board of special inquiry and an appeal from the decision of that board if the Attorney General determines that he is excludable under one of the categories set forth in § 175.53 on the basis of information of a confidential nature, the disclosure of which would be prejudicial to the public interest.

APPENDIX II

Order

RECENT DECISION OF JUDGE HOLLAND, FLORIDA, INTERPRETING 8 C. F. R. 175, 57.

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF FLORIDA,

MIAMI DIVISION.

No. 2712-M—Civil

In the Matter of the Application of
JOHN IVAN VISIC

For a writ of Habeas Corpus:

FRANCIS J. H. DEVER, Officer in Charge, Miami Office—Immigration and Naturalization Service,
Respondent.

This case is before the Court on the Petitioner's motion for a Better Statement.

The Federal Regulation Part 175.57, Title 8, Code of Federal Regulations, does not justify the Attorney General to make the order contained in the return to the order to show cause. The Presidential Proclamation No. 2523 of November 14, 1941, requires the order to be made by the

Secretary of State. The concurrence of the Attorney General in rules and regulations prescribed by the Secretary of State, does not justify the action of the Attorney General under the said Regulation 175.57.

The motion is granted. Ten days are allowed for compliance.

DONE AND ORDERED at Miami, Florida, this 24th day of November, 1948.

United States District Judge.
JOHN W. HOLLAND,

Final Judgment and Order

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF FLORIDA,

MIAMI DIVISION.

No. 2712-M—Civil

In the Matter of the Application of
JOHN IVAN VISIC

For a writ of Habeas Corpus:

FRANCIS J. H. DEVER, Officer in Charge, Miami Office—Immigration and Naturalization Service,
Respondent.

The above cause coming to be heard before me in open court and petitioner having appeared by his attorneys and respondent having appeared in person and by his attorneys and petitioner's oral motion to strike respondent's motion for rehearing on petitioner's motion for better statement having been granted and respondent having declined and refused to produce the official records of the Department of Justice concerning petitioner's exclusion under Part 175.57 Title 8 Code of Federal Regulations on the ground that said records of the Department of Justice were confidential and that their production was forbidden by Department of Justice order No. 3229 of May 2, 1939 and I having issued a writ of habeas corpus and said writ having been duly served upon respondent and respondent having waived any waiting period required or permitted by statute for his response to said writ and respondent having declined to produce the

aforesaid official records relating to petitioner's exclusion on the same aforesaid grounds and respondent having proffered evidence to support and prove the allegations in his return to the order to show cause, it is hereby

ORDERED that respondent be restrained from deporting petitioner from the United States under the exclusion proceedings had under the aforesaid Pa 175.53 and Part 175.57 and that such proceedings be terminated forthwith, and it is further

ORDERED that petitioner be remanded into the custody of the respondent for consideration of petitioner's application for admission to the United States in accordance with the procedure prescribed by Section 16 and Section 17 of the Immigration Act of February 5, 1917 (8 U. S. C. 152 and 153) and regulations made pursuant thereto, and it is further

ORDERED that respondent, pending final determination of petitioner's application for admission to the United States as aforestated shall release petitioner upon petitioner's furnishing bond in the sum of Five Hundred Dollars ($500.00) with good and sufficient sureties as required by law and regulation, conditioned to insure petitioner's appearance in the above proceedings in connection with his application for admission and for his appearance for deportation should that be finally ordered and further conditioned that respondent shall during the pendency of those proceedings remain within the confines of the Southern Judicial District of Florida.

DONE AND ORDERED in Chambers of United States Court House in the City of Miami, County of Dade and State of Florida this 7th day of December, A.D. 1948.

JOHN W. HOLLAND,
U. S. District Judge.

Opinion of the Attorney General of the United States

NATURALIZATION. PROOF OF ENTRY FOR PERMANENT RESIDENCE.

Under section 312 of the Nationality Act of 1940, proof of legal entry for permanent residence is a condition precedent to naturalization of an alien spouse of an American citizen who is abroad in the employment of the Government.

MAY 26, 1941.

The Secretary of State.

MY DEAR MR. SECRETARY: Reference is made to your communication of April 23, 1941, requesting my opinion "whether an alien spouse of a citizen of the United States who is abroad in the employment of the Government of the United States is required under section 312 of the Nationality Act of 1940 to prove that he or she legally entered the United States for permanent residence under the immigration laws of the United States as a condition precedent to naturalization." The Nationality Act of 1940 (Public, No. 853, 76th Cong.) provides in section 301 (d) that "a person may be naturalized as a citizen of the United States in the manner and under the conditions prescribed in this act, and not otherwise." Other provisions of the act specify certain general requirements with which all aliens not exempt therefrom must comply as a prerequisite to naturalization. Among these general requirements are (1) the filing in the prescribed manner of a declaration of intention to become a citizen of the United States, (2) the filing in a court of competent jurisdiction of a petition for naturalization, (3) proof of legal entry in the United States for permanent residence, and (4) proof of prescribed periods of residence within the United States and within the jurisdiction of the court before which the naturalization proceeding is pending. See section 332, paragraphs 9, 11, 13, and 14.

Section 312 of the act reads in pertinent part:

"An alien whose spouse is (1) a citizen of the United States, (2) in the employment of the Government of the United States, * * * and (3) regularly stationed abroad in such employment, and who is (1) in the United States at the time of naturalization, and (2) declares before the naturalization court in good faith an intention to take up residence within the United States immediately upon termination of such employment abroad of the citizen spouse, *may be naturalized upon compliance with all requirements of the naturalization laws, with the following exceptions*:

"(a) No declaration of intention shall be required; and

"(b) No prior residence within the United States or within the jurisdiction of the naturalization court or proof thereof shall be required." (Italics supplied.)

Section 312 is one of seventeen sections of the Nationality Act of 1940 dealing with the naturalization of special classes of aliens. Each of these sections prescribes how persons mentioned in it may be naturalized, expressly exempting them, wholly or in part, from compliance with one or more of the general requirements for naturalization.

Some of these sections expressly exempt persons named in them from the requirement, among others, to prove legal entry in the United States for permanent residence. For example, section 317 expressly exempts persons mentioned in it from that requirement and also from the requirements (1) to file declaration of intention to become a citizen and (2) to prove the statutory periods of residence within the United States and within the jurisdiction of the court. Section 312 also expressly exempts persons named in it from the two requirements last mentioned but does not so exempt them from the other. It is believed that if the Congress had

intended to extend that exemption to them it would have done this also by express language. See *United States* v. *Manzi*, 276 U. S. 463.

Of significance, also, is the fact that alien spouses of citizens other than those mentioned in section 312 are not exempted from the requirement here in question. The other exemptions in section 312 being expressly granted, it is my opinion that the implied grant to spouses of one class of citizens of an exemption not granted to those of other classes should not be read into the section unless the purpose to grant it appears by clear implication. I find no such implication.

Attention is also invited to the regulations issued under the statute by this Department on January 9, 1941 (see Federal Register, issue of January 11, 1941, pp. 230 *et seq.*), which show an administrative interpretation in accord with the above view. Section 363.4 of these regulations in naming the classes of persons who may be naturalized without filing certificates of entry in the United States for permanent residence does not include persons mentioned in section 312.

For the reasons given, it is my opinion that ~~an~~ alien spouse of a citizen of the United States who is abroad in the employment of the Government of the United States is required to prove that he or she legally entered the United States for permanent residence under the immigration laws of the United States as a condition precedent to naturalization. It is not necessary, of course, that the entry be for *immediate* permanent residence, since the statute permits naturalization upon a declaration made in good faith of an "intention to take up residence within the United States immediately upon termination of such employment abroad of the citizen spouse."

Respectfully,

ROBERT H. JACKSON.

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Supreme Court of the United States

October Term, 1949

No. 54

UNITED STATES OF AMERICA *ex rel.*, ELLEN KNAUFF,
Appellant,

against

EDWARD J. SHAUGHNESSY, Acting District Director of Immigration and Naturalization Service,
Appellee.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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PETITNONER-APPELLANT'S REPLY MEMORANDUM

The new Executive Order 2850 of August 17, 1949 and the purported Exclusion Order of October 19, 1949 do not influence the legal status of appellant.

Appellee claims under "I" of his answering memorandum, pp. 18 to 21, that appellant's contention that the exclusion order of October 6, 1948 was inconsistent with Presidential Proclamation 2523 has become moot.

Appellee indirectly admits that the order of October 6, 1948, excluding appellant from the United States, was not authorized by Proclamation 2523 in its original form (see pp. 55-57 of Petitioner's Brief of September 20, 1949). To remedy this defect at this late hour a new proclamation,

Number 2850 (Pet. Brief of September 20, p. 62), was procured which provided that the Attorney General now may exclude suspicious aliens without concurrence of the Secretary of State. Proclamation 2850 of August 17, 1949 also provides that "all existing regulations promulgated under or pursuant to the said Proclamation No. 2523 are hereby ratified and confirmed and shall be construed to have the same effect as if included in such proclamation." To make the adverse situation created by this new administrative step conclusive, appellee further claims that the present Attorney General, Mr. McGrath, issued a new exclusion order of October 19, 1949, set forth on p. 68 of appelle's brief.

Our objections to these new administrative steps are as follows:

A. Can the respondent at this late hour change the position of the appellant and of her husband by creating new administrative fiats with retroactive effect? We believe the answer must be "No".

B. Does the ratification of Sections 175.52 to 175.57 C. F. R., Title 8, by new executive order make these regulations valid, if they were not valid before? We believe the answer should be "No".

C. The new exclusion order of October 19, 1949 was never served.

A.

The new Proclamation 2850 of August 17, 1949 purports retroactively to exclude this alien who heretofore was illegally treated as excluded, but in fact in the United States. Is such retroactive rule making permissible?

The general rule is that a statute will not be given retroactive effect if such result can be avoided (*U. S.* v. *Moore*, 1877, 95 U. S. 760), but that express retrospective

provisions of a statute will be enforced (*Pauley* v. *Crawford*, 1898, 84 F. 942).

These rules, however, do not authorize the President to issue retroactive exclusion rules under the Passport Act of 1918 as amended (Appellant's brief, p. 42). Insofar as this appellant is concerned, justice commands that she must be treated under the administrative rules, if valid, as they were on the books in August 1948 when she arrived and applied for admission.

The War Brides Act of 1945 provides that war brides have to be admitted if they make application for admission prior to December 28, 1948 (Sec. 1 of Act of Dec. 28, 1945, appellant's brief p. 49). If appellant could now in 1949 be excluded under a new proclamation of the President and an order of the Attorney General issued thereunder, as appellee tries to do, she could be retroactively deprived of privileges she had already acquired. Such extraordinary retroactive powers to exclude have never been granted the President, and his proclamation as well as the exclusion order of Mr. McGrath of October 19, 1949, are therefore not authorized by statute and void. This argument is so much more forceful since this retroactive step tends to annihilate Mr. Knauff's rights under the War Brides Act. The Passport Act of 1918 did not envisage such arbitrary acts.

B.

The ratification of Sections 175.52 to 175.57 C. F. R. Title 8, is without legal effect. Section 4 of the Administrative Procedure Act of 1946 (A. P. A.) provides:

> "Sec. 4. Except to the extent that there is involved (1) any military, naval, or foreign affairs function of the United States or (2) any matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts—

(a) Notice. — General notice of proposed rule making shall be published in the Federal Register (unless all persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law) and shall include (1) a statement of the time, place, and nature of public rule making proceedings; (2) reference to the authority under which the rule is proposed; and (3) either the terms or substance of the proposed rule or a dscription of the subjects and issues involved. Except where notice or hearing is required by statute, this subsection shall not apply to interpretative rules, general statements of policy, rules of agency organization, procedure, or practice, or in any situation in which the agency for good cause finds (and incorporates the finding and a brief statement of the reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."

"Rule making" is defined in Sec. 2 (c) A. P. A. as follows:

"(c) Rule and rule making. — "Rule" means the whole or any part of any agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or to describe the organization, procedure, or practice requirements of any agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing upon any of the foregoing. "Rule making" means agency process for the formulation, amendment, or repeal of a rule."

We conclude that 8 C. F. R. 175.52 to 175.57 could be re-enacted only pursuant to the procedure outlined in Section 4 C. F. R. This procedure was not followed in this case. No proposed rule under the new executive order nor any final rule made thereunder was ever published in the Federal Register.

C.

Appellant was never served with the exclusion order of October 19, 1949. This order remained *in petto* of the Attorney General until revealed to appellant's counsel by appellee's brief, and therefore never became effective.

We feel that the highly defective steps taken by the appellee at this late hour to stave off defeat in this case betray confusion and a desire to achieve by indirection what by direction could not be achieved, and we pray that this court will not tolerate such artifice.

CONCLUSION

This court is respectfully asked to consider that the recent war had created a tendency to change the political structure of the country. The magnitude of the danger to which the country was exposed, together with the shock the public conscience received on the day of infamy, the day of Pearl Harbor, have prompted all public minded citizens to endure cheerfully the temporary loss of many inherited liberties. The sweeping powers delegated to the Chief Executive and his cabinet members, on the other hand, have had the inevitable result of turning many of our public official into petty tyrants who try to enlarge the domain of their official powers by devious means.

This case is an example of this tendency. The Passport Act of 1918 that was considered by President Wilson as authority to insist on certain documentary requirements for

people who desired to enter and leave the United States is tortured twenty-five years later into repressive rules giving cabinet officers power arbitrarily to exclude aliens on the pretense that they are subversive. The *raison d'état* is invoked to abolish all vestiges of procedural decency. Whenever an act of tyranny is challenged, the office holders appear, waving the flag, and shouting that the republic is in danger. Malicious informers rule the day.

The War Brides Act was ordained by Congress to give our soldiers a right to the admission of their wives if the latter were "otherwise admissible under the immigration laws." This language clearly shows that only war brides excludable as criminals, prostitutes, anarchists, etc. (Sec. 3, Immigration Act of 1917, as amended; 8 U. S. C. 136, 137) were denied admission, and that exclusion of war brides could only be ordered pursuant to the exclusion procedure of Sections 16, 17 and 18 (8 U. S. C. 152, 153, 154) of the Immigration Act of February 5, 1917, as amended. Exclusion by executive fiat, without a hearing, without counsel, without charges and public evidence was not envisaged by the immigration laws and therefore does not apply to war brides.

To state the same idea in other words: Neither the Passpost Act of 1918 as amended, nor the Executive Orders 2523 and 2850, or the regulations issued thereunder, are "Immigration Laws" in the meaning this term was given in the language of the War Brides Act.

Mrs. Ellen Knauff, the appellant, and Mr. Kurt Knauff, her husband, whose faithful services to the United States of America have been certified, approach this Court, protesting their loyalty to the United States, to its Constitution, and to all ideals that are dear to Americans. They clamor that appellant's exclusion was unjustified, that she is neither

a communist nor an anarchist, and that she rendered no services to any Czech government past or present. They pray for a chance to show their true character to any unbiased and fair tribunal.

Respectfully submitted,

GUNTHER JACOBSON,
Attorney for Appellant.

December 5, 1949.

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In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 733

UNITED STATES OF AMERICA EX REL. ELLEN KNAUFF, PETITIONER

v.

W. FRANK WATKINS, DISTRICT DIRECTOR OF IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Appeals has not yet been reported. The opinions of the District Court upon the original hearing (R. 28-35) and upon reargument (R. 54) have not been reported.

JURISDICTION

The judgment of the Court of Appeals was entered March 11, 1949. The petition for a writ of

certiorari was filed April 18, 1949. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

QUESTIONS PRESENTED

1. Whether the procedure under which the Attorney General directed that petitioner, an alien seeking to enter the United States, be excluded without a hearing was valid.

2. Whether such authority was exercised by the Attorney General in conformity with statutory authorization.

3. Whether the so-called War Brides Act conferred upon petitioner a right of entry into the United States which transcended prohibitions and restrictions generally applicable to aliens seeking admission.

4. Whether petitioner's purpose to apply for naturalization affords her any basis for relief from the order excluding her from admission into the United States.

STATUTES AND REGULATIONS INVOLVED

The text of the pertinent statutes and regulations are set forth in petitioner's brief. Most relevant are the Passport Act of May 22, 1918, as amended by the Act of June 21, 1941, 22 U. S. C. 223 (Pet. 33); Presidential Proclamation No. 2523 of November 14, 1941 (Pet. 40-45); regulations issued under this proclamation, 8 C. F. R. 175.53 and 8 C. F. R. 175.57 (Pet. 47-52); the War Brides Act of

December 28, 1945, 59 Stat. 659, 8 U. S. C. 232 (Pet. 34-35).

Briefly stated, the following pattern has been established by those legislative and administrative pronouncements. The Passport Act, as amended in 1941, specifies that it is to be effective when the United States is at war, or during the proclaimed national emergency, or, as to aliens, whenever a state of war exists between two or more states. Under such conditions the President is empowered to find and make public proclamation that "restrictions and prohibitions in addition to those" otherwise provided be imposed upon entry into the United States. Upon the making of such a proclamation, it is unlawful for any alien to enter the United States "except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President shall prescribe."

Under authority of that statute, the President on November 14, 1941, issued Proclamation No. 2523, reciting the then existent national emergency and state of war between two or more states and declaring "that the interests of the United States require that restrictions and prohibitions, in addition to those otherwise provided by law, shall be imposed" upon entry into the United States. In that proclamation he announced various rules, regulations, and orders restricting entries into the United States. Under Section 3 no alien is permitted to enter the United States unless he is in possession

of a valid unexpired permit to enter issued by the Secretary of State, or is exempted from obtaining such a permit to enter. In addition, the proclamation commands that:

> No alien shall be permitted to enter the United States if it appears to the satisfaction of the Secretary of State that such entry would be prejudicial to the interests of the United States as provided in the rules and regulations hereinbefore authorized to be prescribed by the Secretary of State, with the concurrence of the Attorney General.

Section 8 of the proclamation enjoins "all departments and agencies of the Government to cooperate with the Secretary of State in the execution of his authority under this proclamation and any subsequent proclamation, rule, regulation, or order promulgated in pursuance hereof." Presidential Proclamation No. 2523 has never been revoked and is still in effect.

Discharging their responsibilities under the statute and proclamation, the Secretary of State and the Attorney General jointly issued regulations, which now appear in 8 C. F. R., Part 175. 8 C. F. R. 175.53 defines the categories of aliens whose entry shall be deemed prejudicial to the interests of the United States. 8 C. F. R. 175.57 permits temporary exclusion at a port of entry in the case of an alien applicant for admission who appears to be

excludable under 8 C. F. R. 175.53. Section 175.57 also provides:

> Any alien so temporarily excluded by an official of the Department of Justice shall not be admitted and shall be excluded and deported unless the Attorney General, after consultation with the Secretary of State, is satisfied that the admission of the alien would not be prejudicial to the interests of the United States.

Subsection (b) of Section 175.57 provides:

> * * * In any special case the alien may be denied a hearing before a board of special inquiry and an appeal from the decision of that board if the Attorney General determines that he is excludable under one of the categories set forth in § 175.53 on the basis of information of a confidential nature, the disclosure of which would be prejudicial to the public interest.

The War Brides Act of December 28, 1945, grants certain exemptions from the physical, mental, and documentary requirements of the immigration laws to the alien spouses and children of American citizens who served honorably in the armed forces of the United States during the Second World War. It stipulates that such aliens "shall, *if otherwise admissible under the immigration laws,* and if application for admission is made within three years of the effective date of this act, be admitted to the United States." Under its express limitations, the

War Brides Act has expired and has not been extended. However, petitioner applied for admission to the United States before the statute's expiration date and thus may claim any benefits to which she may be entitled under that statute.

STATEMENT

Petitioner, Ellen Knauff, is an alien who was born in Germany and now claims to be stateless. On February 28, 1948, she married Kurt W. Knauff, a naturalized citizen of the United States who had served in the armed forces of the United States during World War II and had been honorably discharged on January 17, 1946. The marriage took place in Germany, where the husband was and still is a civilian employee of the United States Army.

On August 14, 1948, petitioner sought to enter this country as a war bride under the terms of the Act of December 28, 1945, for the purpose of applying for naturalization. Upon examination by an immigrant inspector she was temporarily excluded pursuant to 8 C.F.R. 175.57, *supra,* on the ground that her admission to the United States was or might be prejudicial to the interests of the United States. On October 6, 1948, the Attorney General ordered, on the basis of confidential information and evidence, that petitioner be denied a hearing before a Board of Special Inquiry, that the temporary exclusion order be made permanent, and that she be deported from the United States as an

alien whose entry into this country would be prejudicial to the interests of the United States.

Petitioner then brought habeas corpus proceedings in the District Court for the Southern District of New York challenging the legality of her detention. After a hearing, the court dismissed the writ (R. 28-35). A motion for reargument was entertained but the court adhered to its original decision (R. 54). On appeal to the Court of Appeals for the Second Circuit, the order of the District Court was affirmed.

ARGUMENT

1. Petitioner challenges the constitutionality of the procedure under which she was barred from entry into the United States. She contends that the War Brides Act conferred upon her and her husband [1] some vaguely defined status which could not constitutionally be denied to them. She complains that she was improperly denied a hearing. And she denounces the regulation as vague and ambiguous, and the statute as improperly delegating legislative authority to executive officers.

It is well established that Congress has plenary power to regulate the admission of aliens into the United States. The existence of such unqualified

[1] It cannot be perceived what standing petitioner's husband can claim in this proceeding. His wife is under detention following rejection of her application for admission. It is she who complains that her restraint is illegal, and the only question to be adjudicated is the propriety of that restraint. Any claim to relief must rest upon substantive or procedural rights available to her.

power is inherent in national sovereignty. *The Chinese Exclusion Case,* 130 U. S. 581; *Turner* v. *Williams,* 194 U. S. 279. In executing this mandate, Congress may enact laws prescribing the conditions under which an alien may enter the United States and may commit the administration and enforcement of such laws to the executive officers of the Government. *Fong Yue Ting* v. *United States,* 149 U. S. 698; *Low Wah Suey* v. *Backus,* 225 U. S. 460.

Petitioner is an alien seeking to enter the United States. She has gained no foothold in the United States. In contemplation of law she is regarded as stopped at the boundary line and kept there while her right to enter is being adjudicated. *United States* v. *Ju Toy,* 198 U. S. 253, 263; *Kaplan* v. *Tod,* 267 U. S. 228. A person so situated is not entitled to claim the full protections of the Constitution, even if he claims to be an American citizen, which petitioner does not. *United States* v. *Ju Toy, supra; Quon Quon Poy* v. *Johnson,* 273 U. S. 352, 357.

While petitioner apparently is aware of these well settled principles, she contends nevertheless that there is no authority to deny her a hearing. It is true that it has been said in other contexts that an alien seeking to enter the United States is entitled to a fair hearing. This concept probably

originated in *Chin Yow* v. *United States*, 208 U. S. 8, 12, where this Court said:

> The decision of the Department is final, but that is on the presupposition that the decision was after a hearing in good faith, however summary in form.

As a general proposition, such observations are indisputably true. In the ordinary case, the arriving alien whose right to enter is questioned, is given a full hearing before a Board of Special Inquiry, as required by Section 16 of the Immigration Act of 1917, 8 U.S.C. 153.

But there is nothing in the Constitution which precludes Congress from authorizing the exclusion of an arriving alien without a hearing when the granting of such a hearing would conflict with the national interest during time of war or other emergency. The decisions which have affirmed the right to a hearing in exclusion cases have been rendered under statutes or administrative regulations which provide for a hearing. In such circumstances, the courts intercede only to assure compliance with the requirements of the applicable statute or regulations. But no case, so far as we are aware, has ever held that an alien who is denied a formal hearing and excluded pursuant to Congressional authorization has any redress in the

courts. As this Court stated in *Nishimura Ekiu* v. *United States*, 142 U. S. 651, 660:

> It is not within the province of the judiciary to order that foreigners who have never been naturalized, nor acquired any domicile or residence within the United States, nor even been admitted into the country pursuant to law, shall be permitted to enter, in opposition to the constitutional and lawful measures of the legislative and executive branches of the national government. *As to such persons, the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law.* (Italics supplied.)

Petitioner has overlooked the distinction between the deportation of aliens residing within the United States and the exclusion of those who have never resided here and who seek to enter. Alien residents are entitled to the protections of the due process requirement of the Constitution. *Ng Fung Ho* v. *White*, 259 U. S. 276; *The Japanese Immigrant Case*, 189 U. S. 86. Non-resident aliens who seek to enter cannot claim similar protections.

Aliens seeking admission must accept the procedures governing their admission or exclusion which Congress and executive officials, pursuant to statutory authority, have prescribed. That principle was found applicable by the only other court which until now has passed directly upon the constitutionality of the procedures challenged in the instant case. In *Kaminer* v. *Clark*, decided March 7, 1949 (unreported), a three judge District Court

for the District of Columbia held in a brief *per curiam* opinion:

> Without expressing any opinion as to whether the plaintiff has pursued a proper remedy, the Court is of the opinion that an alien seeking entry into the United States has no standing to attack the constitutionality of an act of Congress and that in any event the act in question is constitutional.

The denial of a hearing to an alien seeking admission is, indeed, an extraordinary measure, and it is invoked only in exceptional cases where the disclosure of the basis of exclusion would be prejudicial to the public interest (see 8 C.F.R. 175.57 (b), *supra*). This authority stems from the Passport Act (Pet. 33) and is limited in its application to a time of war or national emergency. The court below held that the existence of the proclaimed national emergency was in itself sufficient to justify the exercise of such authority. It is fully supported as well by the existence of a state of war. The United States still is at war. *Ludecke* v. *Watkins*, 335 U. S. 160. While actual hostilities ended over three years ago, there has been no treaty of peace with the principal enemy states, Germany and Japan, and there has been no legislative or executive declaration that the war is at an end.[2]

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[2] The Act of July 25, 1947, 61 Stat. 449, rescinded war powers granted under various enumerated statutes, and declared the war at an end for the purposes of those statutes. This enumeration and rescission did not include the war powers conferred under the Passport Act.

Many cases have described the broad sweep of the war powers. E.g., *Hirabayashi* v. *United States,* 320 U. S. 81; *Korematsu* v. *United States,* 323 U. S. 214. Of particular significance here is the recent decision of this Court in *Ludecke* v. *Watkins, supra,* which sustained the power under the Alien Enemy Act to remove alien enemies during time of war. In many respects the procedure under that act closely parallels that involved here. There, too, the statute directs the President to take measures to safeguard national security during time of war. There, too, the President has delegated his authority to the Attorney General and has authorized him to deport alien enemies whom he may deem "to be dangerous to the public peace and safety of the United States." There, too, the Attorney General acts without the formal hearing ordinarily provided to satisfy due process requirements.

Petitioner attempts to distinguish the *Ludecke* case by asserting that "Ludecke was not a war bride." We show below that the War Brides Act, which alone gives such persons special advantages, did not override the general provisions of the Passport Act. Actually the authority sustained in the *Ludecke* case went beyond that exercised in the instant case, for the summary deportation procedure involved there, including the denial of formal hearing, was directed against aliens already residing in the United States. Manifestly, this Court's conclusions would be applicable, *a fortiori,* with

respect to an alien non-resident who is stopped at the border while seeking entry.

The *Ludecke* decision and the many cases cited in the Court's opinion in that case completely refute the petitioner's challenge to the validity of the procedure followed in the instant case. There this Court sustained, under comparable conditions of wartime stringency, the denial of a hearing, the delegation of authority to an executive officer of cabinet rank, and the grant of wide latitude to such officer. Manifestly, wartime conditions entailing national security warrant the delegation of wide discretion to executive officials whose responsibility it is to defend the national interest. Manifestly, too, the denial of a hearing under such conditions may become necessary in advancing the national interest and security and in safeguarding the identity of confidential informants, in the United States and overseas.

2. Petitioner claims that the War Brides Act has invested her with an absolute right to enter the United States. It is submitted that this contention is predicated on a number of misconceptions.

Even the most superficial reading of the War Brides Act demonstrates that it was not the Congressional purpose to exempt the alien brides of servicemen from every requirement of the immigration laws. The statute relieves such brides only from the physical, mental, documentary and quota requirements of the immigration laws and insists that their entry into the United States will be per-

mitted only if they are "otherwise admissible under the immigration laws." The legislative history clearly indicates that Congress desired merely to facilitate the admission of alien brides whom our soldiers had married while serving overseas during World War II, and not to exempt such aliens from all the restrictions of the immigration laws. H. Rep. No. 1320, 79th Cong., 1st Sess.; S. Rep. No. 860, 79th Cong., 1st sess.; 91 Cong. Rec. 11921, 12528, 12529.

A liberal construction of the War Brides Act does not justify complete disregard of the Congressional mandate. *United States* v. *Peter You Lo Chen,* 170 F. 2d 307 (C.A. 1). An alien war bride who does not fulfill immigration requirements not specifically excepted in the statute cannot be permitted to enter the United States. *Bonham* v. *Bouiss,* 161 F. 2d 678 (C.A. 9).

Petitioner's argument that the Passport Act, as amended in 1941, is not an "immigration law" within the contemplation of the War Brides statute represents an attempt to exalt form at the expense of substance. Citation of authority hardly is necessary to illuminate the legislative design in referring to "immigration laws." What the War Brides Act contemplated was the retention of restrictions in other statutes, other than those specifically excepted, regulating the entry of aliens into the United States. By its title, its terms, and its objectives, the Passport Act obviously is such a statute.

Petitioner urges that under the terms of the War

Brides Act the war must be regarded as having ended with the President's proclamation of the termination of hostilities on December 31, 1946, and that the Passport Act's inhibitions consequently are no longer applicable. This is a *non-sequitur*. Under no rational construction can the limitation set forth in Section 5 of the War Brides Act be enlarged so as to extinguish war powers exercised under other statutes. The definition of "the Second World War" in Section 5 of the War Brides Act, 8 U.S.C. 236, relates to the provision in Section 1 of the same statute, which limits the benefits of that act to the relatives of veterans who served during "the Second World War" as so defined. Moreover, as the court below has pointed out, the Passport Act directives are supported additionally by the state of emergency proclaimed by the President on May 27, 1941, which has never been terminated.

If petitioner's contentions based on the War Brides Act are sound then there would have been nothing in our laws to prevent an alien spy or saboteur from marrying one of our fifteen million veterans of World War II and then demanding admission to the United States. We cannot conceive that such a conclusion is warranted by the language of the statute or by the Congressional design.

It is to be noted that there have been only two cases, including the instant one, in which the security devices of the Passport Act have been invoked

against an applicant for admission into the United States under the War Brides Act.

3. Petitioner next urges that the Attorney General's processes in the instant case did not conform with statutory mandates. Even assuming that a non-resident alien seeking entry into the United States has any standing to challenge statutes and regulations barring his admission,[3] we believe that this contention likewise is unsupportable.

The procedure set forth in the regulations is both reasonable and appropriate. In cases involving security considerations the final order of exclusion may be made only by the Attorney General or by the Secretary of State, officers of Cabinet rank. When security requirements dictate the need for withholding the names of confidential informants, only the Attorney General can direct, in an exceptional case, that a formal hearing be dispensed with. The Presidential Proclamation, it is true, conferred primary responsibility upon the Secretary of State, authorized him to define the procedure in rules and regulations to be promulgated with the concurrence of the Attorney General, and directed all Government departments and agencies to aid the Secretary of State in precluding the entry of aliens whose admission was deemed prejudicial to the interests of the United States. In implementing his responsibilities under the statute and Presidential Proclamation, the Secretary of State

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[3] *Kaminer* v. *Clark*, *supra*.

promulgated regulations, with the concurrence of the Attorney General, defining the classes of aliens whose entry is deemed prejudicial to the interests of the United States and authorizing the Attorney General under certain contingencies to enter a final order of exclusion in such cases and to deny a formal hearing in exceptional cases where confidential information was involved. Since the Attorney General ordinarily is charged with statutory responsibility for administering the immigration laws, this procedure seems both reasonable and expedient. Moreover, its execution is entrusted to the officials of the highest rank.

Heavy reliance must be placed on the regulations formulated by the executive officers charged with execution of the statute and acting in pursuance of expressed statutory authorization. *Costanzo* v. *Tillinghast*, 287 U. S. 341. Their reading of the statutory mandate should not be upset unless clearly erroneous. *Rosen* v. *United States*, 245 U. S. 467, 473. As the court below has emphasized, the burden of establishing any alleged irregularity of official regulations is upon one who makes the challenge. Petitioner has failed to sustain that burden.

The terms of the regulation do not, as petitioner contends, require consultation by the Attorney General with the Secretary of State in every case. Such consultation is required only if the Attorney General desires to admit an alien whose security status is questionable. Where the Attorney General con-

cludes that the alien's admission may be prejudicial to the interests of the United States, as prescribed in the regulation, he is authorized to deny an application for admission without consulting the Secretary of State.

Petitioner has gone to considerable lengths in attempting to establish that she really is loyal to the United States and that the charges against her are false. She has submitted affidavits, letters, and even efficiency ratings as a Government employee. It is submitted that this is a matter for determination solely by the Attorney General in the execution of his responsibilities under the statute and the regulations. Any evidence regarding petitioner's loyalty should have been submitted, as much of it was, to the Attorney General. Upon the evidence before him, which included confidential information, the Attorney General concluded that petitioner's entry would be prejudicial to the interests of the United States and directed that she be excluded and deported. It is submitted that such a finding is not reviewable in the courts.

Petitioner also attempts to analyze each ground for exclusion set forth in 8 C. F. R. 175.53 and to urge that she is not encompassed within the categories listed in that regulation. Here too it must be urged that only the Attorney General can find, on the basis of evidence satisfactory to him, that petitioner falls within the proscription of the

statute and the regulations and that his findings are not subject to judicial review.

Petitioner contends further that the Passport Act and the Presidential Proclamation do not authorize any modification of the general requirements of the immigration laws and particularly do not justify dispensation with the Board of Special Inquiry hearing ordinarily prescribed in the case of an alien immigrant whose right to enter is questioned. This contention disregards the language and purpose of the Passport Act, which obviously was designed to sanction immigration safeguards, during time of war or national emergency, beyond those ordinarily prescribed. The Passport Act specifies that under such conditions the President may "find that the interests of the United States require that restrictions and prohibitions in addition to those provided otherwise" shall be imposed upon "entry into the United States." The Presidential Proclamation also recites that it is intended "to impose restrictions and prohibitions in addition to those otherwise provided by law upon the departures of persons from and their entry into the United States." The proclamation further authorizes the Secretary of State to prohibit the entry of persons whose admission would be prejudicial to the interests of the United States and to promulgate procedures in reasonable rules and regulations issued with the concurrence of the Attorney General. The "restrictions and prohibitions * * *

upon * * * entry into the United States" mentioned in the statute and the proclamation manifestly are designed to supplement and modify the normal processes of the immigration laws during time of war and national emergency. During such a period, the Passport Act, the Presidential Proclamation and the regulations forge a pattern of exclusion which extends beyond the formulas normally applied under the immigration laws. With evident purpose, the Congress did not limit the President to naming additional classes or grounds for exclusion but included additional "restrictions and prohibitions" upon "the entry" of aliens, which manifestly refers to procedures as well.

The application of this concept also answers petitioner's contentions in relation to Public Law 552, of May 25, 1948, which amended Section 1 of the Anarchist Act of October 16, 1918, 8 U. S. C. 137, by directing the exclusion of "aliens who the Attorney General knows or has reason to believe seek to enter the United States for the purpose of engaging in activities which will endanger the public safety of the United States." That amendment was adopted as a permanent addition to our immigrations laws, effective during time of war and peace. The procedures invoked under the Passport Act, on the other hand, may be invoked only during time of war or national emergency and are being utilized only during such an era. Moreover, it should be pointed out that 8 C. F. R. 175.53 specifically

characterizes as prejudicial to the interests of the United States:

> (a) Any alien who belongs to one of the classes specified in the act of October 16, 1918, as amended.

Consequently an alien in that category would be subject to the procedures described in 8 C. F. R. 175.57.

Petitioner complains that she was not informed of the basis of the decision of the Attorney General. It is evident that petitioner has reference to the evidence upon which her exclusion was directed. Her exhibits (R. 24-25) show that she and her representatives have been made aware of the cause of her exclusion; by reason of such revelation at her request she now complains that the Attorney General waived the confidential nature of the information considered by him and that the seal of segrecy under which the evidence was received has been removed. But the letters to her representative merely set forth the factual conclusions reached by the Attorney General. They did not reveal the confidential evidence submitted for his consideration. Such evidence could not be disclosed in the administrative process. It likewise must be withheld in the court proceedings.

Finally, petitioner seeks support from an unreported district court decision, *Visic* v. *Dever*, in which the United States District Court in Florida held that only the Secretary of State and not the

Attorney General could issue an order of exclusion under 8 C. F. R. 175.57. This is the only court decision in which such a position has been taken, and the decision is being appealed to the United States Court of Appeals for the Fifth Circuit. The few other unreported cases [4] which have considered the same point, including the holding of the lower courts in the instant case, have supported the Attorney General's authority. It is submitted that on this point there is no such diversity of adjudications as would impel the granting of certiorari.

4. Petitioner's final contention is that she should be granted relief in this proceeding because she desires to apply for naturalization under Section 312 of the Nationality Act of 1940, 8 U. S. C. 712. We do not perceive how this assertion has any relevance in the instant proceeding. Petitioner has been barred from entering the United States under the immigration laws and the only issue before this Court is the legality of the administrative order excluding her. Her qualifications as an applicant for naturalization may be considered only by a naturalization court upon a petition regularly filed. Section 301, Nationality Act of 1940, 8 U. S. C. 701.

Petitioner is mistaken in her argument that she now is legally within the United States and thus may apply for naturalization. Being confined in

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[4] *In re Frangos*, D.C.S.D. Ga., January 31, 1949; *In re Angelopoulis*, D.C. Md., February 25, 1949; *In re Alexandrotos*, D.C. Md., February 25, 1949.

an immigration station following rejection of her application for admission, she is in legal contemplation outside of the United States for the purposes of the naturalization laws. *Kaplan* v. *Tod*, 267 U. S. 228. Moreover, petitioner concedes that the administrative interpretation of the statute, supported by an opinion of Attorney General Jackson (set forth in Pet. 57-59), requires lawful admission for permanent residence as a prerequisite to naturalization under Section 312 of the Nationality Act of 1940. That administrative interpretation has been consistent and unchallenged and certainly is entitled to the greatest consideration. In any event, we submit that the petitioner's eligibility or ineligibility for naturalization has no proper place in the consideration of these proceedings.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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APRIL 1949.

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In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 54

UNITED STATES OF AMERICA EX REL. ELLEN KNAUFF, PETITIONER

v.

EDWARD J. SHAUGHNESSY, ACTING DISTRICT DIRECTOR OF IMMIGRATION AND NATURALIZATION SERVICE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT

OPINIONS BELOW

The opinions of the District Court on the original hearing (R. 28-35) and on reargument (R. 54) are not reported. The opinion of the Court of Appeals (R. 60-67) is reported at 173 F. 2d 599.

JURISDICTION

The judgment of the Court of Appeals was entered March 11, 1949 (R. 67). The petition for a writ of certiorari was filed April 18, 1949, and was

granted May 2, 1949 (R. 68). The jurisdiction of this Court rests on 28 U. S. C. 1254(1).

QUESTIONS PRESENTED

Petitioner, an alien "war bride," was ordered excluded from the country by the Attorney General as an alien whose entry would be prejudicial to the interests of the United States. She was denied a hearing before a board of special inquiry because the information on the basis of which the Attorney General found her excludable on that ground was confidential, the disclosure of which would be prejudicial to the public interest. The procedure followed was in accordance with executive regulations jointly issued by the Secretary of State and the Attorney General, pursuant to a Presidential Proclamation issued under the authority of the Act of May 22, 1918, as amended, a wartime and national emergency measure. The questions presented are:

1. Whether the procedure established pursuant to the statute, Proclamation, and regulations is consistent with the requirements of due process of law.

2. Whether the statute authorizing the Proclamation and regulations constitutes an unconstitutional delegation of legislative power.

3. Whether petitioner has an absolute right to enter the country as a "war bride" under the War Brides Act of December 28, 1945, notwithstanding

her excludability under the 1918 Act, as amended, and the Proclamation and regulations thereunder.

A question formerly presented, but which we believe to have become moot (see *infra*, pp. 18-21) is whether the executive regulations were, on October 6, 1948, when the original exclusion order was made, consistent with the Presidential Proclamation.

STATUTES, PROCLAMATION, AND REGULATIONS INVOLVED

The statutes, Presidential Proclamation, and regulations involved are set forth in Appendix A, *infra*, pp. 58-67.

STATEMENT

The facts are not in dispute. They may be summarized as follows:

Petitioner Ellen Knauff,[1] an alien, was born in Germany in 1915 (Ex. 14 [p. 1], R. 50), was last a citizen of Czechoslovakia (R. 6, 16, 18), and presently claims to be stateless (Ex. 14 [p. 2], R. 50). From January 1943 to May 1946 she served creditably in the British Royal Air Force, and was discharged as a flight sergeant (R. 10, 44). Thereafter she was employed by the American Military Government in Frankfurt, Germany, first as a "record analyst and monitor" in the Civil Censor-

[1] Petitioner's maiden name was Ellen Raphael (R. 3; Ex. 14 [p. 1], R. 50). Her name by her first marriage was Ellen Boxhornova (Ex. 14 [pp. 2, 3], R. 50), by which name she is referred to in those documentary exhibits in the record (e.g., R. 13, 14-15, 22) which antedate her second marriage, on February 28, 1948, to Kurt Knauff (R. 3).

ship Division from May 1946 to August 1947 (R. 13, 14, 29, 37) and later as a clerk typist in the Signal Division (R. 16, 18, 21, 22, 29, 37). She also rendered satisfactory service in both these latter capacities, according to written statements and recommendations of her supervisors (R. 13, 14-15, 16, 20, 21, 22, 48). On February 28, 1948, she married Kurt Knauff, a naturalized American citizen who had served in the armed forces of the United States during the Second World War and had been honorably discharged in January, 1946 (R. 3). The marriage took place in Frankfurt, where the husband was and still is a civilian employee of the United States Army (R. 3, 29, 38).

On August 14, 1948, petitioner sought to enter the United States as a "war bride" under the terms of the so-called War Brides Act of December 28, 1945 (*infra*, pp. 66-67), for the purpose of applying for naturalization (R. 4, 8, 29-30, 38). She had secured a temporary leave of absence from her position in the Signal Division in Frankfurt for this purpose (R. 10-11, 29, 38). Upon examination by an immigrant inspector at the port of New York, she was temporarily excluded, pursuant to 8 C.F.R. 175.57 (*infra*, pp. 64-66), as an alien whose entry was deemed to be prejudicial to the interests of the United States (R. 6). On October 6, 1948, pursuant to a recommendation of the Assistant Commissioner of Immigration and Naturalization, and on the basis of confidential information and evidence, the Attorney General, also under 8 C.F.R.

175.57, ordered petitioner permanently excluded, without a hearing before a board of special inquiry, as an alien whose entry into this country would be prejudicial to the interests of the United States (*ibid.*).

Thereafter, on October 8, 1948, in the District Court for the Southern District of New York, a petition for a writ of habeas corpus (R. 3-4) was filed on petitioner's behalf by her husband, who had returned to this country on a temporary leave of absence from his position in Germany upon learning of his wife's exclusion and detention at the port of entry (R. 11, 39). The petition challenged the legality of petitioner's exclusion "for security reasons" and averred her right to enter as a "war bride" under the terms of the Act of December 28, 1945 (R. 4). The writ issued (R. 2) and a return was filed (R. 6-7), which set forth the Attorney General's order excluding petitioner pursuant to 8 C.F.R. 175.57. In a traverse to the return (R. 8-11), petitioner reiterated and amplified the allegations of the petition and in addition set forth a copy of a letter from the Attorney General to Mr. Joseph D. Nunan, who had intervened on her behalf. In this letter, dated October 4, 1948, the Attorney General had advised Mr. Nunan (R. 9; see also R. 24) that—

> Since talking with you last week, I have again looked into the case of Mrs. Ellen Knauff.
>
> I can see no alternative to excluding her. She was formerly a paid agent of the Czecho-

> slovakian Government, and reported on American personnel assigned to the Civil Censorship Division in Germany. The Federal Bureau of Investigation feels that she would be a hazard to internal security.[2]

Petitioner stated in the traverse that "the facts stated in this letter are untrue" (R. 10) and that she believed she was "a victim of a foul denunciation of a woman jealous of my husband" (R. 11).

At a hearing on the writ on November 16, 1948 (R. 12), the District Court (Hulbert, D. J.) received in evidence various documentary exhibits offered on petitioner's behalf, including documents tending to show the creditable nature of her service in the British Royal Air Force and with the American Military Government in Germany (R. 13-22, 26-27) and the two letters from the Attorney General to Mr. Nunan mentioned above (R. 24, 25). The court heard argument of counsel (R. 12), but no testimony was adduced.

Following the hearing, the court entered an opinion and order (R. 28-35) dismissing the writ. A motion for reargument was then filed (R. 36), supported by affidavits of petitioner's attorney (R. 37-43, 52-53), to which were attached additional docu-

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[2] In a previous letter to Mr. Nunan, dated September 9, 1948, the Attorney General had said (R. 25):

"This will acknowledge your letter of August 27, on behalf of Mrs. Ellen Knauff.

"I recall her case very well and after giving it very careful consideration, signed the exclusion order, for security reasons. I regret very much that I haven't a more favorable report for you."

mentary exhibits (R. 44-50) giving further proof of petitioner's faithful services on behalf of the Royal Air Force (R. 44-47) and the American Military Government in Germany (R. 48-49), and including an application, executed by petitioner, indicating her intention to file a petition for naturalization (Ex. 14, R. 50). The motion for reargument was granted (R. 54), but the court adhered to its original decision in a brief memorandum opinion (*ibid.*) and again ordered the writ dismissed (R. 55). On appeal to the Court of Appeals for the Second Circuit, the order of the District Court was affirmed (R. 67).

On October 19, 1949, present the Attorney General, acting under the authority of Presidential Proclamation No. 2523, as amended on August 17, 1949 (see *infra*, pp. 58-60, and footnote 29, *infra*, pp. 60-61), considered petitioner's case *de novo* and entered a new order excluding her (Appendix B, *infra*, p. 68).

SUMMARY OF ARGUMENT

I

Petitioner contends that the Attorney General's exclusion order of October 6, 1948, is invalid, asserting that under the Presidential Proclamation as it stood at that time only the Secretary of State was empowered to make such an order. While it is not believed that the Presidential Proclamation was ever subject to such a construction, the point has become moot, for on August 17, 1949, the Proclamation was amended to provide expressly

that aliens may be excluded upon an order of the Attorney General, and on October 19, 1949, the Attorney General, acting under the amended proclamation and upon *de novo* consideration of the petitioner's case, issued a new order excluding her.

II

Petitioner's exclusion without a hearing, pursuant to executive regulations, did not deprive her of due process of law, nor were the regulations issued pursuant to a constitutionally objectionable delegation by Congress of legislative power.

A. There was no denial of due process. An alien has no constitutional right to a hearing for the purpose of establishing a claimed right to enter this country. Whatever rights he may have are wholly statutory in origin, and, at least in time of war or national emergency, may be restricted or withheld by Congress or by executive authority acting pursuant to statutory authorization.

1. Congress' power to exclude aliens entirely or to admit them on such terms as it chooses to prescribe is absolute, inhering in the very concept of national sovereignty. And Congress may commit the administration and enforcement of laws relating to aliens to executive officials. The power absolutely to exclude includes the power to exclude without a hearing. Where a hearing is guaranteed by statute or regulation, the courts may intervene to assure fairness in the hearing and compliance

with the requirements of the law in this respect. But nothing in the Constitution precludes Congress, or executive authority acting pursuant to congressional authorization, from directing the exclusion of an alien without a hearing for good cause. Particularly where the granting of a hearing would conflict with the national interest in time of war or national emergency, it may be withheld.

The rights of arriving aliens are to be distinguished from the rights of resident aliens. Resident aliens are entitled to the full protection of due process, and may not be deported without a hearing except as authorized by Congress in the exercise of its war power. But petitioner is an alien who, in contemplation of law, is without the country, asking leave to enter. Aliens in this class must accept the procedures governing their admission or exclusion which Congress and executive officials acting pursuant to statutory authority have prescribed. For them the procedure thus established is due process of law.

2. The denial of a hearing even to an arriving alien is, in practice, an extraordinary measure. A hearing is denied under the regulations only in "special" cases, where disclosure of the information or the source of the information on the basis of which the exclusion is ordered for security reasons would be contrary to the national interest. The power to order denial of a hearing in such cases stems from the Act of May 22, 1918, as

amended, which is effective only in time of war or national emergency. For the purposes of this statute, neither the war nor the emergency is over. Consequently, even if the power of Congress, or of executive authority acting pursuant to congressional authorization, to provide for the exclusion of an alien without a hearing under named conditions were doubtful but for the limitation of the exercise of the power to wartime and time of emergency, that limitation eliminates any doubt as to the constitutionality of the restriction. *Ludecke* v. *Watkins*, 335 U. S. 160.

B. The delegation of authority to make the regulations was valid. The Act of May 22, 1918, as amended, grants broad authority to the President, in time of war or national emergency, if he finds that "the interests of the United States" so require, to make rules and regulations adding to the restrictions and prohibitions already provided by law in respect of the admission of aliens. *Schechter Corp.* v. *United States*, 295 U. S. 495, on which petitioner relies in contending that this delegation of authority is unconstitutional, is distinguishable on several independent grounds.

1. The delegation relates essentially to an aspect of the foreign affairs of the United States. Exceptionally broad delegations of administrative authority have traditionally been recognized as valid in this field. *United States* v. *Curtiss-Wright Corp.*, 299 U. S. 304. Many acts and Joint Resolu-

tions of Congress, dating from the beginning of the nation's history, have delegated to the President in the field of foreign relations administrative authority no less sweeping than the statute at bar. Some of these acts and Joint Resolutions, all referred to with approval in the *Curtiss-Wright* case, were cast in language bearing striking resemblance to that of the statute here involved.

2. The delegation is valid on the independent ground that it is limited to time of war or national emergency, neither of which is over. Since the Constitution commits to the Executive and to Congress the exercise of the war power, which embraces "every phase of the national defense," it has necessarily given them wide scope for the exercise of judgment and discretion in determining the nature and extent of the threatened danger and in the selection of the means for resisting it. *Hirabayashi* v. *United States,* 320 U. S. 81. A striking illustration of the extent to which Congress may, during a war period, delegate power to executive officials is furnished by the Second War Powers Act, which founded the entire national program for rationing and allocation of material on a single sentence, authorizing the President to allocate materials "upon such conditions and to such extent as he shall deem necessary or appropriate in the public interest and to promote the national defense," if he should be "satisfied that the fulfillment of requirements for the defense of the United States" would result in

shortages of materials available "for defense or for private account or for export." The validity of this sweeping delegation of power to the President has been uniformly sustained. The legislative history of the statute here involved shows that Congress deemed the broad authority it conferred on the President vital to the interests of the nation in time of war or national emergency, and considered detailed and piecemeal legislation on the subject "obviously impracticable." Since the Constitution demands neither the impossible nor the impracticable, the delegation here challenged is valid.

3. Even apart from the foreign affairs aspect of the legislation in issue and its limitation to time of war or national emergency, it contains a permissible delegation of authority. Considered in its historical and administrative context, it is plain that the "interests of the United States" which the President is to consider are only those relating to its security. So viewed, the standard established by Congress is not less definite than many other single standards which this Court has upheld.

III

Petitioner's status as a "war bride" does not exempt her from the inhibitions of the immigration laws generally. The War Brides Act of 1945 exempts persons to whom it applies only from those ordinarily applicable restrictions which are spe-

cifically enumerated in the Act. It expressly provides that those to whom its benefits apply may be admitted only if they are "otherwise admissible under the immigration laws." The Act of May 22, 1918, as amended, pursuant to which and to the regulations issued thereunder petitioner was excluded, is clearly an "immigration law" within the meaning of the War Brides Act. It is clear, moreover that nothing in the latter Act extinguishes war powers exercised under other statutes.

ARGUMENT

Congress has declared, in Section 1 (a) of the Act of May 22, 1918, as amended by the Act of June 21, 1941 (*infra*, p. 58), that "When the United States is at war or during the existence of the national emergency proclaimed by the President on May 27, 1941, * * * and the President shall find that the interests of the United States require that restrictions and prohibitions in addition to those [already provided by law] be imposed upon the departure of persons from and their entry into the United States, and shall make public proclamation thereof, it shall * * * be unlawful * * * [f]or any alien to * * * enter * * * the United States except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President shall prescribe."

Pursuant to the authority thus conferred on him, the President, on November 14, 1941, issued Procla-

mation No. 2523 (*infra*, pp. 58-60), which was in effect when petitioner sought entry into this country and is still in effect, with certain amendments made since the commencement of this habeas corpus proceeding (see footnote 29, *infra*, pp. 60-61), the significance of which is discussed at pp. 20-21, *infra*. In this Proclamation, the President, after declaring that "the exigencies of the present international situation and of the national defense require that restrictions and prohibitions, in addition to those otherwise provided by law, be imposed upon the departure of persons from and their entry into the United States," (*infra*, p. 59) ordered that thereafter "* * * no alien shall enter * * * the United States unless he is in possession of a valid unexpired permit to enter issued by the Secretary of State, * * * or is exempted from obtaining a permit to enter in accordance with the rules and regulations which the Secretary of State, with the concurrence of the Attorney General, is hereby authorized to prescribe * * *" (paragraph (3), first subparagraph, *infra*, p. 60). The Proclamation further ordered that "No alien shall be permitted to enter the United States if it appears to the satisfaction of the Secretary of State that such entry would be prejudicial to the interests of the United States as provided in the rules and regulations hereinbefore authorized to be prescribed by the Secretary of State, with the concurrence of the Attorney General" (paragraph (3), second subparagraph, *infra*, p. 60).

Discharging the responsibilities placed upon them by the above Proclamation, the Secretary of State and the Attorney General jointly issued regulations, which now appear in 8 C.F.R., Part 175, the pertinent portions of which are copied at pp. 61-66, *infra*. These regulations define eleven categories of aliens whose entry is "deemed to be prejudicial to the interests of the United States" (8 C.F.R., 1947 Supp., 175.53(a)-(k), *infra*, pp. 62-64).[3] Then, in 8 C.F.R., 1947 Supp., 175.57(a), *infra*, pp. 64-65, it is provided (1) that "Any alien, even though in possession of a permit to enter, or exempted * * * from obtaining a permit to enter, may be excluded temporarily if at the time he applies for admission * * * it appears that he is or may be excludable" under one of these categories; (2) that "Any alien so temporarily excluded by an official of the Department of Justice shall not be admitted * * * unless the Attorney General, after consultation with the Secretary of State, is satisfied that the admission of the alien would not be prejudicial to the interests of the United States"; and (3) that

[3] E.g., aliens who are members of or affiliated with "a political organization associated with or carrying out policies of any foreign government opposed to the measures adopted by the Government of the United States in the public interest, or in the interest of national defense, or in the interest of the common defense of the countries of the Western Hemisphere, or in the prosecution of the war" (category (b), *infra*, p. 62); aliens seeking to procure "secret information concerning the plans, preparations, equipment, or establishments for the national defense of, or the prosecution of the war by, the United States" (category (c), *infra*, p. 63); etc. The record does not show under which of the eleven categories petitioner was found by the Attorney General to be excludable.

"Any alien so temporarily excluded by any other official shall not be admitted * * * unless the Secretary of State is satisfied that the admission of the alien would not be prejudicial to the interests of the United States." Finally, in 8 C.F.R., 1947 Supp., 175.57(b), *infra*, pp. 65-66, it is provided that, where an official of the Department of Justice temporarily excludes an alien on the ground that he is or may be excludable under one or more of the eleven categories previously defined, "no hearing by a board of special inquiry shall be held until * * * such a hearing is directed by the Attorney General," and, further, that "In any special case the alien may be denied a hearing before a board of special inquiry * * * if the Attorney General determines that he is excludable under one of the [previously defined] categories * * * on the basis of information of a confidential nature, the disclosure of which would be prejudicial to the public interest."

On August 17, 1949, Proclamation No. 2523 was amended to provide that "* * * no alien * * * shall enter or be permitted to enter the United States if it appears to the satisfaction of the *Attorney General* that such entry would be prejudicial to the interests of the United States" [italics added]. In addition, "all existing regulations" under the original proclamation were ratified and confirmed. See Proclamation No. 2850, referred to in footnote 29, *infra*, pp. 6061.

Petitioner, an alien who has never resided in the United States, challenges the constitutionality of

the procedure under which she has been barred from entry into this country. In particular, she contends (1) that it was a denial of due process of law to deprive her of a hearing before a board of special inquiry for the purpose of determining whether in truth she is an alien whose entry would be prejudicial to the interests of the United States (Br. 6-14) and (2) that the procedure established by Presidential Proclamation No. 2523 and the regulations issued thereunder is the result of an unconstitutional delegation by Congress of its legislative power over the admission of aliens (Br. 26-30). She further contends that the War Brides Act of December 28, 1945 (*infra*, pp. 66-67), conferred upon her husband[4] some vaguely defined status which absolutely requires her admission to the country and overrides any other consideration which might be a ground for excluding her (Br. 21-24). She finally contends that the Attorney General's exclusion order of October 6, 1948, was invalid because, under the Presidential Proclamation as it then stood, only the Secretary of State was empowered to make such an order (Br. 22-23).[5]

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[4] The petitioner's husband can claim no standing in this proceeding. Petitioner alone is under detention following rejection of her application for admission. It is she who complains that her restraint is illegal, and the only question to be adjudicated is the propriety of that restraint. Any claim to relief must rest upon substantive or procedural rights available to her.

[5] Petitioner advances an additional argument, which, however, we think undeserving of extended discussion. The argument seems to be (Br. 30-41) that she should be granted relief in this proceeding because she desires to apply for

These points will be discussed in the order named except that, since the last point is believed to have become moot, the reasons for this belief will be stated at the commencement of the Argument.

I

Petitioner's Contention that the Regulations under which the Exclusion Order of October 6, 1948, Was Issued Are Inconsistent with the Presidential Proclamation, Has Become Moot.

Petitioner challenges the order excluding her, asserting that it was made by the wrong Cabinet officer. The argument is this:

At the time petitioner was ordered excluded, Presidential Proclamation No. 2523 of November 14, 1941, provided that "no alien shall be permitted to enter the United States if it appears to the satisfaction of the *Secretary of State* that such entry would be prejudicial to the interests of the United

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naturalization under Section 312 of the Nationality Act of 1940, 8 U.S.C. 712 (providing that an alien who is "in the United States," and whose citizen spouse is abroad in the employ of the United States, may, under certain designated additional conditions, be naturalized without having to comply with specified requirements of the law which would otherwise obtain). But, apart from the fact that petitioner is not yet "in the United States" in contemplation of law, she being rather deemed as stopped at the boundary while her right to enter is being adjudicated (*Kaplan* v. *Tod*, 267 U.S. 228, 230-231; *Nishimura Ekiu* v. *United States*, 142 U.S. 651, 661), we fail to perceive the relevance in this proceeding of her asserted intention to become naturalized. Petitioner has been barred from entering the United States under our immigration laws and the single ultimate issue before the Court is the validity of the administrative order excluding her. Her qualifications as an applicant for naturalization may be considered only by a naturalization court upon a petition regularly filed following lawful entry. Nationality Act of 1940, § 301, 8 U.S.C. 701.

States as provided in the rules and regulations hereinbefore authorized to be prescribed by the Secretary of State, with the concurrence of the Attorney General" [italics added] (paragraph (3), second subparagraph, *infra*, p. 60). Petitioner contends (Br. 22-23) that, under the Proclamation, only the Secretary of State was empowered to make the order of exclusion, and that, consequently, in so far as 8 C.F.R. 175.57(a) (*infra*, pp. 64-65) authorizes the Attorney General to make the order of exclusion, it is inconsistent with the above-quoted provision of the Proclamation. She accordingly contends that the exclusion order entered in this case by the Attorney General, though authorized by the cited regulation (*i.e.*, 8 C.F.R. 175.57(a)), is nevertheless invalid because not authorized by the Proclamation, whence the regulation derives its authority.[6] As noted by petitioner (Br. 23), *Visic* v. *Dever*, decided November 24, 1948, an unreported decision by District Judge Holland of the Southern District of Florida, is an authority for this view.[7]

For the reasons mentioned in the margin,[8] we do

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[6] This contention of petitioner was not advanced at any stage of the proceedings in the District Court. The point was raised for the first time on appeal.

[7] Judge Holland's brief opinion in the *Visic* case is reproduced at pp. 69-70 of petitioner's brief.

[8] It is to be noted that the Proclamation (paragraph (3), second subparagraph, quoted above in the text) provided that no alien *shall be permitted to enter* the United States if it appears to the satisfaction of the Secretary of State that *such entry would be prejudicial* to the interests of the United States, etc. It did *not* say that no alien could be *refused*

not share Judge Holland's views in this respect. However, the point would seem in any event to have lost all but academic interest in this case. On August 17, 1949, Proclamation No. 2523 was amended to read, "* * * no alien * * * shall enter or be permitted to enter the United States if it appears to the satisfaction of the *Attorney General* that such entry would be prejudicial to the interests of the United States" [italics added]. In addition, "[a]ll existing regulations" under the original Proclamation were ratified and confirmed. See Proclamation No. 2850, referred to in footnote 29, *infra*, pp. 60-61. Subsequently, on October 19, 1949, the present Attorney General, upon *de novo* consideration of petitioner's case, entered a new order excluding her (see Appendix B, *infra*, p. 68). The alleged inconsistency between regulation 8 C.F.R. 175.57(a) and Proclamation No. 2523 in its original form—and, by the same token, the alleged invalidity of the original order of ex-

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permission to enter *unless* the Secretary of State deemed the entry prejudicial. With this distinction in mind, we think the following a legitimate interpretation of the Proclamation: If the Secretary of State deemed the entry of an alien prejudicial to the nation's interests, he could exclude him regardless of a possible contrary opinion on the part of the Attorney General. But in the absence of an express and definitive decision by the Secretary of State to exclude the alien, the Attorney General could make the decision to exclude. The Attorney General, in short, could himself either admit or exclude the alien, subject only to the paramount authority of the Secretary of State to order exclusion "if it appears to [his] satisfaction * * * that such entry would be prejudicial to the interests of the United States * * * ".

clusion—would therefore now seem to be moot issues.[9]

II

The Procedure Whereby Petitioner, Pursuant to a Presidential Proclamation Issued under Statutory Authority and Administrative Regulations Issued under the Proclamation, Was Excluded from the United States Without a Hearing As An Alien Whose Entry Would Be Prejudicial to the National Interests Was Not Unconstitutional Either As a Denial of Due Process of Law or as Involving an Invalid Delegation of Legislative Power.

A. *An alien has no right under the Constitution to a hearing for the purpose of establishing a claimed right to enter the United States; he has only such rights as Congress may give him, and, certainly in time of war or national emergency, Congress (or executive agencies acting pursuant to congressional authorization) may restrict or withhold such rights.*—1. Petitioner's major complaint in this case is that she had a right under the Fifth Amendment to some kind of hearing to establish her right to enter the United States, and that denial of such a hearing was a deprivation of freedom without due process of law which neither Congress nor any executive authority acting pur-

[9] That this is true is shown by a consideration of the consequence for petitioner of a reversal of the judgments below on the sole ground that the original order of exclusion was made by the wrong Cabinet officer. In that event, the new order of exclusion, entered by the present Attorney General, would still be outstanding against her. And, in view of the amendment of Proclamation No. 2523 referred to in the text, this order is not subject to the criticism—now made by petitioner in respect of the original order—that it is unauthorized by the Presidential Proclamation.

suant to congressional authorization can, consistently with that Amendment, impose (Br. 6-14). We submit, however, that, pretermitting the question of whether an alien who has never resided or indeed set foot in the United States has any rights whatever under the Constitution (cf. *United States* v. *Ju Toy*, 198 U. S. 253, 263), this contention is clearly unsound.

If Congress—instead of empowering the President, as it did, in time of war or national emergency, to impose "restrictions and prohibitions" on the admission of aliens in addition to such restrictions and prohibitions as were already provided for by law—had itself enacted in detail those provisions of the regulations now under attack (including the crucial provision that the Attorney General might decline to accord an alien the normal statutory hearing before a board of special inquiry where, on the basis of confidential information in his possession, the disclosure or revelation of the sources of which would be prejudicial to the public interest, he determines that the entry of the alien would be prejudicial to the interests of the United States), such legislation would clearly be within the constitutional power of Congress to enact. For it has long been settled that Congress' power to exclude aliens entirely or to admit them on such terms and conditions as it chooses to prescribe is absolute. *United States ex rel. Volpe* v. *Smith*, 289 U. S. 422, 425; *Low Wah Suey* v. *Backus*, 225 U. S. 460,

467-468; *Oceanic Navigation Co.* v. *Stranahan*, 214 U. S. 320, 339-340; *Turner* v. *Williams*, 194 U. S. 279, 289-290; *The Japanese Immigrant Case*, 189 U. S. 86, 97; *Wong Wing* v. *United States*, 163 U. S. 228, 237; *Fong Yue Ting* v. *United States*, 149 U. S. 698, 704-713; *Nishimura Ekiu* v. *United States*, 142 U. S. 651, 659; *The Chinese Exclusion Case*, 130 U. S. 581, 603-604. "[O]ver no conceivable subject is the legislative power of Congress more complete * * *. * * * As the authority of Congress over the right to bring aliens into the United States embraces every conceivable aspect of that subject, it must follow that if Congress has deemed it necessary to impose particular restrictions on the coming in of aliens * * *, * * * the constitutional right of Congress to enact such legislation is the sole measure by which its validity is to be determined by the courts." *Oceanic Navigation Co.* v. *Stranahan, supra*, 214 U. S. at 339-340. The existence of such unqualified power is inherent in national sovereignty. *Turner* v. *Williams, supra*, 194 U. S. at 290; *Nishimura Ekiu* v. *United States, supra*, 142 U. S. at 659; *The Chinese Exclusion Case, supra*, 130 U. S. at 603-604. And it is settled that where Congress prescribes conditions under which an alien may enter the United States it may commit the administration and enforcement of such laws to executive officers of the Government. *Low Wah Suey* v. *Backus, supra*, 225 U. S. at 467-468; *United States* v. *Ju Toy, supra*, 198

U. S. at 263; *The Japanese Immigrant Case*, *supra*, 189 U. S. at 97; *Fok Yung Yo* v. *United States*, 185 U. S. 296, 302; *Lem Moon Sing* v. *United State*, 158 U. S. 538, 547; *Fong Yue Ting* v. *United States*, *supra*, 149 U. S. at 713.

While petitioner apparently is aware of these well-settled principles, she contends nevertheless that there can be no constitutional authority to deny her a hearing—an opportunity to offer proof of her eligibility to enter and to be confronted with and given a chance to rebut any opposing evidence.[10] But obviously the power absolutely to exclude includes the power to exclude without a hearing. It is true that it has been said in other contexts that an alien seeking to enter the United States is entitled to a fair hearing. This concept

[10] There is not, of course, and has not been anything to prevent petitioner from presenting to the Attorney General any evidence at her command to show that her entry would not be prejudicial to the national interest—that he is mistaken in considering her entry a security risk. In fact, the record shows that she has availed herself of just such an opportunity in having Mr. Nunan (see pp. 5-6, *supra*, and footnote 2, *supra*, p. 6) intercede with the Attorney General on her behalf. Likewise, all the documentary evidence filed by her in the habeas corpus proceeding in her attempt to show she is not a security risk could just as well have been submitted to the Attorney General with a request to reconsider his decision to exclude her. Petitioner was made aware, of course, when she was ordered excluded, of the general ground of her exclusion, *viz.*, that her entry was deemed prejudicial to the national interest (see R. 4), though the precise category (8 C.F.R. 175.53, 1947 Supp., (a)-(k)) under that general heading into which her case was considered to fall was evidently not made known to her. Her awareness that the Attorney General considered her a security risk on the basis of confidential information that she "was formerly a paid agent of the Czechoslavakian Government, and reported on American personnel assigned to the Civil Censorship Division in Germany" (*supra*, pp. 5-6) was fortuitous, resulting from the Attorney General's advice to that effect to Mr. Nunan, who in turn disclosed this advice to petitioner.

probably originated in *Chin Yow* v. *United States*, 208 U. S. 8, 12, where it was said:

> * * * The decision of the Department is final, but that is on the presupposition that the decision was after a hearing in good faith, however summary in form. * * *

But that case involved an applicant for admission who claimed to be a *citizen*, a fact which manifestly distinguishes such a situation from one where, as here, there is no such claim. Cf. *Bilokumsky* v. *Tod*, 263 U. S. 149, 152-153; *Ng Fung Ho* v. *White*, 259 U. S. 276, 284-285. Still more important, *Chin Yow's* case and other decisions which have affirmed the right of an alien to a fair hearing in exclusion cases have been rendered under statutes or administrative regulations which provided for a hearing.[11] But where the applicable statutes or regulations do not explicitly require a hearing, none need be accorded. *Nishimura Ekiu* v. *United States, supra*, 142 U. S. at 663. Where a hearing is required by statute or regulation, the courts interceded only to assure compliance with the requirements of the applicable statute and regulations. Cf. *Johnson* v. *Shaughnessy*, 336 U. S. 806. But there is clearly nothing in the Constitution which precludes Con-

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There is, incidentally, nothing in the record to indicate that this is the full extent of the Attorney General's information concerning petitioner. Moreover, the Attorney General did not reveal to Mr. Nunan the sources of even that information which he mentioned in his letter.

[11] In the ordinary case, the arriving alien whose right to enter is questioned is given a full hearing before a board of special inquiry, with the right to appeal to the Attorney General from an adverse decision. See §§ 16 and 17 of the Immigration Act of 1917, 8 U.S.C. 152, 153, copied in footnote 30, *infra*, pp. 65-66.

gress, or executive authority acting pursuant to congressional authorization, from directing the exclusion of an arriving alien without a hearing when the granting of such a hearing would conflict with the national interest during time of war or other national emergency. As this Court stated in *Nishimura Ekiu* v. *United States, supra,* 142 U. S. at 660:

> An alien immigrant, prevented from landing by any such [executive] officer claiming authority to do so under an act of Congress, and thereby restrained of his liberty, is doubtless entitled to a writ of *habeas corpus* to ascertain whether the restraint is lawful. [Citing cases.] And Congress may, if it sees fit, * * * authorize the courts to investigate and ascertain the facts on which the right to land depends. But, on the other hand, the final determination of those facts may be entrusted by Congress to executive officers; and in such a case, as in all others, in which a statute gives a discretionary power to an officer, to be exercised by him upon his own opinion of certain facts, he is made the sole and exclusive judge of the existence of those facts, and no other tribunal, unless expressly authorized by law to do so, is at liberty to reexamine or controvert the sufficiency of the evidence on which he acted. [Citing cases.] It is not within the province of the judiciary to order that foreigners who have never been naturalized, nor acquired any domicil or residence within the United States, nor even been admitted into the

> country pursuant to law, shall be permitted to enter, in opposition to the constitutional and lawful measures of the legislative and executive branches of the national government. *As to such persons, the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law.* [Citing cases.] (Italics added.)

Petitioner's constitutional arguments are founded in part on a failure to observe the distinction between the deportation of aliens residing within the United States and the exclusion of aliens who, never having resided or even been physically present in the country, seek to enter. The alien who resides here and who is sought to be deported may claim the full protection of the due process clause of the Constitution. *Bridges* v. *Wixon*, 326 U. S. 135, 154, 156; *Vajtauer* v. *Commissioner of Immigration*, 273 U. S. 103, 106; *Tisi* v. *Tod*, 264 U. S. 131, 133-134; *Bilokumsky* v. *Tod, supra*, 263 U. S. at 156-157; *Ng Fung Ho* v. *White, supra*, 259 U. S. at 284-285; *Zakonaite* v. *Wolf*, 226 U. S. 272, 274-275.[12] But petitioner is an alien seeking entry to the United States. She has gained no foothold here. In contemplation of law she is regarded as stopped at the boundary line while her eligibility to enter is adjudicated. *Kaplan* v. *Tod*, 267 U. S.

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[12] Even in deportation proceedings, however, due process does not necessarily, and in all cases, require that a hearing be granted. The war power of Congress enables it constitutionally to authorize the deportation of an alien enemy without a hearing. *Ludecke* v. *Watkins*, 335 U.S. 160, 171-172.

228, 230; *Chin Yow* v. *United States, supra,* 208 U. S. at 12-13; *United States* v. *Ju Toy, supra,* 198 U. S. at 263; *Nishimura Ekiu* v. *United States, supra,* 142 U. S. at 661. A person so situated is not entitled to claim the full protection of the Constitution, even if he claims to be an American citizen, which petitioner does not. *Quon Quon Poy* v. *Johnson,* 273 U. S. 352, 357-358; *Ng Fung Ho* v. *White, supra,* 259 U. S. at 282; *United States* v. *Ju Toy, supra,* 198 U. S. at 263; *United States ex rel. Medeiros* v. *Watkins,* 166 F. 2d 897 (C. A. 2). Aliens seeking entry must accept the procedures governing their admission or exclusion which Congress and executive officials, acting pursuant to statutory authority, have prescribed. That principle was found applicable by the only court, besides the courts below,[13] which has passed directly upon the constitutionality of the procedures here challenged. In *Kaminer* v. *Clark,* decided March 7, 1949 (unreported), a three-judge District Court for the District of Columbia held in a brief *per curiam* opinion:

> Without expressing any opinion as to whether the plaintiff has pursued a proper remedy, the Court is of the opinion that an

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[13] Subsequent to the decision of the Court of Appeals in the instant case, another judge of the District Court for the Southern District of New York (Kaufman, D.J.), on the authority of the Court of Appeals' decision in this case, sustained the validity of the legislation and executive regulations involved herein. *United States ex rel. Vajta* v. *Watkins,* decided July 11, 1949, not yet reported.

alien seeking entry into the United States has no standing to attack the constitutionality of an act of Congress and that in any event the act in question is constitutional.[14]

2. The denial of a hearing even to an alien seeking admission is, in fact, an extraordinary measure, invoked only in those exceptional or "special" (8 C.F.R. 175.57(b), *infra*, pp. 65-66) cases where the disclosure of the information on the basis of which the exclusion is ordered, or revelation of the source of that information, would be prejudicial to the public interest. This authority stems immediately from Presidential Proclamation No. 2523 (*infra*, pp. 58-60) and ultimately from § 1 of the Act of May 22, 1918, as amended (*infra*, p. 58). Hence it is an authority that may be exercised only in time of war or the existing national emergency. Neither the war nor the national emergency proclaimed May 27, 1941 (6 F.R. 2617), had terminated when petitioner was ordered excluded without a hearing. Neither has terminated yet. *Ludecke* v. *Watkins*, 335 U. S. 160, 169-170; *Woods* v. *Miller Co.*, 333

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[14] Following the decision by the three-judge court upholding the constitutionality of the statute and the Proclamation and regulations thereunder, the cause was remanded to a one-judge court. The latter court dismissed the action, which was a suit for a declaratory judgment, and the dismissal was affirmed on appeal to the Court of Appeals for the District of Columbia Circuit (*Kaminer* v. *Clark*, decided July 11, 1949, not yet reported, pending on petition for a writ of certiorari, No. 346) on the ground that the action for a declaratory judgment, if such relief was obtainable at all in view of the availability of the remedy of habeas corpus, must be sought in the District Court for the Southern District of New York, where Kaminer was detained in custody.

U. S. 138, 141; see Presidential Proclamation No. 2714 of December 31, 1946 (12 F.R. 1), proclaiming the cessation of hostilities, but noting that "a state of war still exists." [15] Nor is the continued existence of the state of war, and particularly of the national emergency, a merely technical status. See *Ludecke* v. *Watkins, supra,* 335 U. S. at 169, footnote 14. The continuing reality of the emergency is indeed a matter of such common knowledge that the point need not be labored. Consequently, even if the power of Congress—or of executive authority acting pursuant to congressional authorization—to provide for the exclusion of aliens without a hearing under named conditions were doubtful *but for* the limitation of the exercise of the power to time of war or national emergency, that limitation places the constitutionality of the restriction beyond question.

Many cases have described the broad sweep of the war powers. *E.g., Woods* v. *Miller Co., supra; Korematsu* v. *United States,* 323 U. S. 214; *Hirabayashi* v. *United States,* 320 U. S. 81; *Hamilton* v. *Kentucky Distilleries Co.,* 251 U. S. 146. Particularly relevant here is *Ludecke* v. *Watkins, supra,* 335 U. S. 160, sustaining the validity of the Alien Enemy Act of 1798, which empowers the President, in time of war, to apprehend, restrain, secure, and remove from the country all alien ene-

[15] The Act of July 25, 1947, c. 327, 61 Stat. 449, rescinded war powers granted under various enumerated statutes, and declared the war at an end for the purposes of those statutes. This enumeration and rescission did not include the war powers conferred under the Act of May 22, 1918, as amended.

mies fourteen years of age and over residing here. By proclamation, which was likewise sustained, the President, on July 14, 1945, had directed the removal from the country of all alien enemies "deemed by the Attorney General to be dangerous to the public peace and safety of the United States" (335 U. S. at 163). The fact that no hearing was required to effect removal was not considered by the Court a valid argument against the constitutionality of the Act or the proclamation. "The fact that hearings are utilized by the Executive to secure an informed basis for the exercise of summary power does not argue the right of courts to retry such hearings, nor bespeak denial of due process to withhold such power from the courts" (335 U. S. at 171-172). Thus the *Ludecke* case parallels in important particulars the case at bar. There, too, the statute directed the President to take measures to safeguard national security in time of war. There, too, the President had delegated his authority to the Attorney General, authorizing him to deport alien enemies whom he deemed dangerous to public peace and safety. There the Attorney General was authorized to act without the formal hearing ordinarily provided in cases of deportation of resident aliens to satisfy requirements of due process. The *Ludecke* decision and the many cases cited therein thus completely refute petitioner's challenge of the validity of the procedure followed in the instant case, both in respect of the due process and the delegation-of-

power arguments, which latter will be dealt with in detail under subpoint B, *infra*, pp. 34-53. Indeed, the statute and regulations involved in the case at bar are, we think, in one important respect, less susceptible to objection on constitutional grounds than those involved in the *Ludecke* case. For, though Ludecke was an enemy alien, he was a *resident* [16] alien who had been ordered deported, and resident aliens, as we have seen, have traditionally been recognized as entitled to the full protection of the due process guaranty of the Constitution. Petitioner, on the other hand, is a stranger to our shores.[17]

We submit, therefore, for the reasons stated, that petitioner has failed to show that the denial to her of the hearing before a board of special inquiry normally accorded to entering aliens of doubtful eligibility was a denial of due process of law. The withholding of such a hearing was occasioned by the fact that the Attorney General was in possession of confidential information, the disclosure of which (or the sources of which) at a public hear-

[16] He had lived in this country since some time prior to 1937 (335 U.S. at 162, footnote 3).

[17] Petitioner attempts to distinguish the *Ludecke* case on the ground that "Ludecke was not a war bride and the construction of the War Bride Act was not attempted in that case" (Br. 24). We show below, however (see point III, *infra*, pp. 53-57), that the War Brides Act, which alone gives such persons special advantages, does not and was never intended to override, or render such persons exempt from, the general provisions of the immigration laws (which include the statutory and executive provisions of law here involved), except as expressly provided therein. The War Brides Act contains no provision excepting war brides from the provisions of the Act of May 22, 1918, as amended.

ing would have been prejudicial to the national interest, and which satisfied him that petitioner is an alien whose admission to the country would constitute a security risk. The decision to withhold a hearing was made pursuant to express executive regulations formulated by the Secretary of State with the Attorney General's concurrence, under the authority of a Presidential Proclamation issued pursuant to a valid Act of Congress, and effective only in time of war or national emergency. The precise reason why, in the judgment of the Attorney General, it would be prejudicial to the nation's interests in these days of crisis publicly to reveal the confidential information which convinced him that petitioner's entry would constitute a security risk—whether it be that disclosure would jeopardize and possibly silence confidential informants abroad, on whom we must rely in order to keep alert to dangers to our security, or whether it be some other, equally cogent reason—cannot be known to petitioner, to us, or to the courts. Cf. *C. & S. Air Lines* v. *Waterman Corp.*, 333 U. S. 103, 111. And to require the Attorney General, as a condition of his power to order exclusion without a hearing, to make known his reasons for believing public disclosure of the grounds of his order to be detrimental to the public interest—so that a court in a judicial proceeding may be able to appraise the adequacy of the reasons and thus evaluate the necessity for such an order and its consistency with the normal requirements of due process—is mani-

festly absurd. For the damage sought to be prevented would then be done.

If it be argued that to exclude even an alien stranger from our shores without a hearing and without disclosure of the information on the basis of which the action is taken is not in keeping with our traditional democratic processes, the plain answer is that the desirability of adhering to these traditional democratic processes has never been thought, where aliens are concerned and particularly in time of war or national emergency, to override the exigencies of national security. Like the removal order involved in *Ludecke* v. *Watkins, supra*, the Attorney General's order of exclusion in this case is, we submit, not subject to judicial review.[18]

B. *The procedure whereby petitioner was excluded without a hearing pursuant to Presidential Proclamation and executive regulations thereunder was established pursuant to a valid delegation of administrative authority.*—Section 1(a) of

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[18] Compare *United States* v. *Curtiss-Wright Corp.*, 299 U.S. 304 (discussed at pp. 36-44, *infra*, in connection with the challenge of the statute here involved as an unconstitutional delegation of legislative power), where the Court observed, with reference to the President's powers in the field of foreign relations (299 U.S. at 320): "* * * Moreover, he, not Congress, has the better opportunity of knowing the conditions which prevail in foreign countries, and especially is this true in time of war. *He has his confidential sources of information.* He has his agents in the form of diplomatic, consular and other officials. *Secrecy in respect of information gathered by them may be highly necessary, and the premature disclosure of it productive of harmful results.* * * *" [italics added]. See also *C. & S. Air Lines* v. *Waterman Corp.*, *supra*, 333 U.S. 103, 111-112.

the Act of May 22, 1918, as amended (*infra*, p. 58)—the statutory basis of the Proclamation and regulations pursuant to which petitioner was ordered excluded without a hearing—provides in relevant part that—

> When the United States is at war or during the existence of the national emergency proclaimed by the President on May 27, 1941, or as to aliens whenever there exists a state of war between, or among, two or more states, and the President shall find that the interests of the United States require that restrictions and prohibitions in addition to those provided otherwise than by this Act be imposed upon the departure of persons from and their entry into the United States, and shall make public proclamation thereof, it shall * * * be unlawful—
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> (a) For any alien to * * * enter or attempt to * * * enter the United States except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President shall prescribe; * * *.

Petitioner challenges the validity of this statute as containing an unconstitutional delegation of legislative power (Br. 26-30). She relies on *Schechter Corp.* v. *United States*, 295 U. S. 495, 529-542. The *Schechter* case is distinguishable, however, on several independent grounds, and the delegation here challenged is clearly valid. First, the dele-

gation here in issue is one essentially relating to foreign affairs, and delegations in this field no less broad than that now challenged have been recognized by this Court as constitutionally unobjectionable. Secondly, apart from the foreign affairs aspect of the legislation, the broad delegation is warranted as a justifiable wartime and emergency measure. Finally, even if the delegation in question were not a wartime exercise of the sovereign's power to regulate external affairs, the standard established by Congress is, when considered in its historical and administrative context, quite as definite as other single standards for the executive exercise of delegated authority which this Court has upheld.

1. *The delegation relates essentially to foreign affairs, in respect of which exceptionally broad delegations of administrative authority have traditionally been recognized as valid.*—In *United States* v. *Curtiss-Wright Corp.*, 299 U. S. 304,[19]

[19] The decision sustained the validity, as against the claim that there had been an unconstitutional delegation of legislative power to the President, of a Joint Resolution of Congress providing that "if the President finds that the prohibition of the sale of arms and munitions of war in the United States to those countries now engaged in armed conflict in the Chaco may contribute to the reestablishment of peace between those countries, and if * * * he makes proclamation to that effect, it shall be unlawful to sell, except under such limitations and exceptions as the President prescribes, any arms or munitions of war in any place in the United States to the countries now engaged in that armed conflict, or to any person, company, or association acting in the interest of either country, until otherwise ordered by the President or by Congress" (299 U.S. at 312).

this Court carefully distinguished congressional delegations of power to the executive in the field of domestic affairs from such delegations in the field of foreign affairs. The Court pointed out that constitutional restrictions on delegations of the former type are far more stringent than in the case of the latter for the reason that, whereas Congress derives from the states its power to legislate in domestic matters, it possesses its legislative power in the field of foreign affairs as an intrinsic attribute of sovereignty, inherited directly from the British Crown on the occasion of the separation of the colonies as a unit from Great Britain (299 U. S. at 315-317). "It results," the Court said (299 U. S. at 318), "that the investment of the federal government with the powers of external sovereignty did not depend upon the affirmative grants of the Constitution." Among such powers, possessed by the Government, no' derivately from the states, but as an inherent attribute of sovereignty, the Court included (*ibid.*) the powers to declare and wage war, conclude peace, make treaties, maintain diplomatic relations with other sovereigns, acquire territory by discovery and occupation, *expel undesirable aliens,* etc. The Court further pointed out that in this "vast external realm, with its important, complicated, delicate and manifold problems," the President occupies a unique position; he "alone has the power to speak or listen as a representative of the nation" (299 U. S. at 319). Legislation in the field of foreign

affairs, observed the Court, "must often accord to the President a degree of discretion and freedom from statutory restriction which would not be admissible were domestic affairs alone involved. Moreover, he, not Congress, has the better opportunity of knowing the conditions which prevail in foreign countries, and especially is this true in time of war. He has his confidential sources of information. He has his agents in the form of diplomatic, consular and other officials. Secrecy in respect of information gathered by them may be highly necessary, and the premature disclosure of it productive of harmful results" (299 U. S. at 320). When Congress authorizes the President to act in the field of foreign relations, the Court further stated (299 U. S. at 321-322), it "properly bears in mind the important consideration that the form of the President's action—or, indeed, whether he shall act at all—may well depend, among other things, upon the nature of the confidential information which he has or may thereafter receive, or upon the effect which his action may have upon our foreign relations. This consideration, in connection with what we have already said on the subject, discloses *the unwisdom of requiring Congress in this field of governmental power to lay down narrowly definite standards by which the President is to be governed*" [italics added].

"In the light of the foregoing observations," the Court concluded (299 U. S. at 322),

> * * * it is evident that this court should not be in haste to apply a general rule which will have the effect of condemning legislation like that under review as constituting an unlawful delegation of legislative power. The principles which justify such legislation find overwhelming support in the unbroken legislative practice which has prevailed almost from the inception of the national government to the present day.

In substantiation of this conclusion, the Court reviewed many acts and Joint Resolutions of Congress, dating practically from the beginning of the nation's history, involving delegations of administrative authority to the President in the field of foreign relations no less sweeping than the Joint Resolution under consideration in that case or the Act involved in the case at bar (299 U. S. at 322-327, and see footnote 2, pp. 324-326). Some of the statutes reviewed were, indeed, cast in language bearing striking resemblance to that of the statute now challenged. Examples of such statutes and Joint Resolutions are given below:

The Act of March 3, 1795, c. 53, 1 Stat. 444 (see 299 U. S. at 322-323), authorized the President to permit the exportation of arms, cannon, and military stores, the law prohibiting such exports to the contrary notwithstanding, the only prescribed guide for his action being that such exports should be "in cases connected with the security of the com-

mercial interest of the United States, and for public purposes only."

The Act of February 9, 1799, c. 2, § 4, 1 Stat. 615 (see 299 U. S. at 323), authorized the President, "if he shall deem it expedient and consistent *with the interest of the United States,*" to issue orders remitting and discontinuing certain restraints and prohibitions imposed by the Act, either with respect to the French Republic, or to any island, port, or place belonging thereto, "with which a commercial intercourse may safely be renewed," and also to revoke any such order "whenever, in his opinion, *the interest of the United States* shall require."[20]

The Act of February 27, 1800, c. 10, § 6, 2 Stat. 9 (see 299 U. S. at 323), conferred similar authority on the President, qualified in virtually identical language.

The Act of February 28, 1806, c. 9, 2 Stat. 351 (see 299 U. S. at 324), prohibited all commercial intercourse between residents of the United States and residents of any part of the Island of St. Domingo not under French sovereignty, and prescribed penalties and forfeitures for its violation. Notwithstanding the positive provisions of the Act, however, the President was authorized, by § 5, to issue orders at any time remitting and discontinuing the restraints and prohibitions imposed by the Act "if he shall deem it expedient and consistent with *the interests of the United States*" to do so.

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[20] Italics herein are supplied.

The Act of December 19, 1806, c. 1, 2 Stat. 411 (see 299 U. S. at 324, footnote 2), suspended the operation, until a designated date, of a certain embargo statute relating to imports, and, by § 3, authorized the President further to suspend its operation "if in his judgment *the public interest* should require it."

The Act of April 22, 1808, c. 52, 2 Stat. 490 (see 299 U. S. at 324-325, footnote 2), authorized the President, in the event that suspension of hostilities between the belligerent powers of Europe or changes in their measures affecting neutral commerce should render American commerce "sufficiently safe, in the judgment of the President," to suspend an existing embargo on all ships in American ports "in whole or in part" and "under such exceptions and restrictions * * * as *the public interest and the circumstances of the case* may appear to require."

The Joint Resolution of April 22, 1898, 30 Stat. 739 (see 299 U. S. at 325), authorized the President, "in his discretion, and with such limitations and exceptions as shall seem to him expedient," to prohibit the export of coal or other material used in war from any seaport of the United States "until otherwise ordered by the President or by Congress."

Following its review of the numerous Acts and Joint Resolutions of Congress of the type set forth above, the Court in the *Curtiss-Wright* case reached

the following conclusions, which, we submit, are virtually dispositive of petitioner's present contention that the statute at bar contains an unconstitutional delegation of legislative power:

> Practically, every volume of the United States Statutes contains one or more acts or joint resolutions of Congress authorizing action by the President in respect of subjects affecting foreign relations, which either leave the exercise of the power *to his unrestricted judgment, or provide a standard far more general than that which has always been considered requisite with regard to domestic affairs.* * * * [299 U. S. at 324] (italics added).
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> * * * * * *
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> The result of holding that the joint resolution here under attack is void and unenforceable as constituting an unlawful delegation of legislative power would be to stamp this multitude of comparable acts and resolutions as likewise invalid. And while this court may not, and should not, hesitate to declare acts of Congress, however many times repeated, to be unconstitutional if beyond all rational doubt it finds them to be so, an impressive array of legislation such as we have just set forth, enacted by nearly every Congress from the beginning of our national existence to the present day, must be given unusual weight in the process of reaching a correct determination of the problem. A legislative practice such as we have here, evidenced not by only occasional instances, but marked by the movement

> of a steady stream for a century and a half of time, goes a long way in the direction of proving the presence of unassailable ground for the constitutionality of the practice, to be found in the origin and history of the power involved, or in its nature, or in both combined. [299 U. S. at 327-328.]
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> * * * * *
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> The uniform, long-continued and undisputed legislative practice just disclosed rests upon an admissible view of the Constitution which, even if the practice found far less support in principle than we think it does, we should not feel at liberty at this late day to disturb. [299 U. S. at 329.][21]

That a statute like that involved in the instant case, dealing with the exclusion of aliens from our shores, is one essentially relating to the foreign or external affairs of the nation cannot be doubted. The opinion in the *Curtiss-Wright* case, 299 U. S. at 318, explicitly recognized "the power to expel undesirable aliens" as a power of the Government relating to such foreign or external matters, and hence "inherently inseparable from the conception of nationality." *A fortiori*, a statute relating to the *exclusion* of aliens is in the same category. Con-

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[21] See also, on the general subject of delegation of power in the field of foreign relations, *C. & S. Air Lines* v. *Waterman Corp.*, 333 U.S. 103, 109-110; *Panama Refining Co.* v. *Ryan*, 293 U.S. 388, 421-422; *Norwegian Nitrogen Co.* v. *United States*, 288 U.S. 294, 304-305; *Hampton & Co.* v. *United States*, 276 U.S. 394, 404-411; *Field* v. *Clark*, 143 U.S. 649, 680-694.

sequently, the reasoning and conclusions of this Court in the *Curtiss-Wright* case apply with equal cogency to the case at bar. We submit, therefore, that the broad delegation made by the Act of May 22, 1918, as amended, is clearly constitutional by reason of its subject-matter—the admission and exclusion of aliens—and quite apart from the additional factor, discussed at pp. 44-51, *infra*, that it is a wartime and emergency measure.[22]

2. *The delegation is valid on the independent ground that it is limited to time of war or national emergency.*—The Act here challenged is limited in its operation, by its terms, to time of war or national emergency, and, as we have had occasion to point out previously (*supra*, pp. 29-30), neither the war nor the emergency is yet over. We submit that, apart from the fact that the delegation now challenged relates essentially to an aspect of the foreign affairs of the nation, it is valid as a measure limited in its operation to time of war or national emergency.

The war power of the national government "is not restricted to the winning of victories in the field and the repulse of enemy forces. It embraces

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[22] Compare with the statute here involved the Act of May 10, 1920, c. 174, § 1, 41 Stat. 593, which authorized the Secretary of Labor to deport such aliens who, having been convicted of violating certain designated laws, were found by the Secretary to be "undesirable residents of the United States." In *Mahler* v. *Eby*, 264 U.S. 32, 40-41, this statute was sustained as against the claim that it invalidly delegated legislative power to the Secretary of Labor.

every phase of the national defense * * *." *Hirabayashi* v. *United States*, 320 U. S. 81, 93. And "[s]ince the Constitution commits to the Executive and to Congress the exercise of the war power in all the vicissitudes and conditions of warfare, it has necessarily given them wide scope for the exercise of judgment and discretion in determining the nature and extent of the threatened injury or danger and in the selection of the means for resisting it." *Ibid.* Cf. *Yakus* v. *United States*, 321 U. S. 414, 462 (Rutledge, J., dissenting).

Perhaps the most striking illustration of the extent to which Congress may, during a war period, delegate power to executive officials is furnished by the Second War Powers Act of March 27, 1942, c. 199, § 301, 56 Stat. 176, 177 (50 U. S. C. App. 633), which founded the entire national program for rationing and allocation of material upon the following single sentence (see O'Brian and Fleischmann, *The War Production Board Administrative Policies and Procedures* (1944), 13 Geo. Wash. L. Rev. 1, 15 *et seq.*):

> Whenever the President is satisfied that the fulfillment of requirements for the defense of the United States will result in a shortage in the supply of any material or of any facilities for defense or for private account or for export, the President may allocate such material or facilities in such manner, upon such conditions and to such extent as he shall deem necessary or appropriate in the public interest and to promote the national defense.

The validity of this sweeping delegation of power to the President has been uniformly sustained. *O'Neal* v. *United States*, 140 F. 2d 908 (C.A. 6), certiorari denied, 322 U. S. 729; *United States* v. *Randall*, 140 F. 2d 70 (C.A. 2); *Gallagher's Steak House* v. *Bowles*, 142 F. 2d 530 (C.A. 2), certiorari denied, 322 U. S. 764; *Country Garden Market, Inc.* v. *Bowles*, 141 F. 2d 540 (C.A. D.C.), certiorari denied, 322 U. S. 752; *Rose* v. *United States*, 149 F. 2d 755, 760 (C.A. 9). For other examples of broad delegations of authority in wartime which have been sustained, see *Lichter* v. *United States*, 334 U. S. 742, 778-783 (authority to recapture "excessive profits" under the Renegotiation Act); *Dakota Central Tel. Co.* v. *South Dakota*, 250 U. S. 163 (authority to take possession of and operate telegraph lines "whenever he [the President] shall deem it necessary for the national security or defense"); *McKinley* v. *United States*, 249 U. S. 397 (authority conferred on the Secretary of War to do "everything by him deemed necessary" to suppress houses of ill-fame within such distance of Army posts "as he may deem needful").[23]

[23] *Ludecke* v. *Watkins*, 335 U.S. 160, discussed at pp. 30-32, *supra*, in another connection, involved a wartime statute (the Alien Enemy Act of 1798) delegating to the President broad authority to apprehend, restrain, secure, and remove from the country all alien enemies fourteen years of age and upward, to "direct the conduct to be observed, on the part of the United States, toward the aliens who become so liable; the manner and degree of the restraint to which they shall be subject and in what cases, and upon what security their residence shall be permitted, and to provide for the removal, of those who, not being permitted to reside within the United States, refuse or neglect to depart there-

Keeping in mind the oft-repeated principle of this Court that "the Constitution, viewed as a continuously operative charter of government, is not to be interpreted as demanding the impossible or the impracticable" (*Opp Cotton Mills* v. *Administrator*, 312 U. S. 126, 145; *Bowles* v. *Willingham*, 321 U. S. 503, 515; *Yakus* v. *United States*, 321 U. S. 414, 424), we submit that the authority conferred on the President by the statute at bar is clearly valid as a wartime, national-emergency measure. It was enacted in the midst of World War I,[24] and its legislative history clearly indicates that it was con-

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from," and to "establish any other regulations which are found necessary in the premises and for the public safety" (335 U.S. at 161-162). While this statute does not appear to have been expressly assailed as containing an unconstitutional delegation of power, the decision sustaining it would seem to indicate implicit recognition that the broad grant of power to the executive contained in it was justified by wartime necessity.

[24] In its original form, prior to the amendment of June 21, 1941, the Act of May 22, 1918 (c. 81, § 1, 40 Stat. 559) provided:

"When the United States is at war, if the President shall find that the public safety requires that restrictions and prohibitions in addition to those provided otherwise than by this Act be imposed upon the departure of persons from and their entry into the United States, and shall make public proclamation thereof, it shall, until otherwise ordered by the President or Congress, be unlawful—

"(a) For any alien to depart from or enter or attempt to depart from or enter the United States except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President shall prescribe;"

The Act of June 21, 1941 (c. 210, § 1, 55 Stat. 252) amended the initial clause so as to make it read, "When the United States is at war or during the existence of the national emergency proclaimed by the President on May 27, 1941, or as to aliens whenever there exists a state of war between, or among, two or more states," and substituted "the interests of the United States" for "the public safety."

sidered both by Congress and the President as a measure vital to the interest of national security.

The House Committee report on the bill (H.R. 10264) which became the Act of May 22, 1918 (see footnote 24, *supra*, p. 47) stated (H. Rep. No. 485, 65th Cong., 2d sess., pp. 2-3):

> The bill is intended to stop an important gap in the war legislation of the United States. When the war began in 1914 the necessity of controlling foreign travel was immediately recognized by the belligerents and all adopted stringent systems of regulation. It is a matter of common knowledge that Germany has from time to time closed her borders entirely. As soon as this country entered the war the President provided by regulations 9 and 10 of his proclamation of April 6, 1917, that German alien enemies might not enter or leave the United States without securing permission. When war was declared against Austria-Hungary similar regulations were promulgated concerning Austro-Hungarian alien enemies.
>
> This measure of limitation of foreign travel was far from sufficient. * * * No argument is necessary to indicate the probability that Germany will wherever possible employ renegade Americans or neutrals as her agents instead of employing Germans about whom suspicion would easily be excited. The danger of the transference of important military information causes the Government great anxiety * * *.

> New legislation is the only remedy. In his address to Congress on December 4, 1917, the President emphasized the necessity of creating "a very definite and particular control over the entrance and departure of all persons into and from the United States." The Attorney General in his report for 1917 made a similar recommendation. The Department of Justice proceeded to draft the bill now under discussion, which was referred to and received the approval of all the other executive departments interested in the matters to which it relates. * * *
>
> * * * * *
>
> The power vested in the President is broad and comprehensive. * * *
>
> It is essential to meet the situation that the Executive should have wide discretion and wide authority of action. No one can foresee the different means which may be adopted by hostile nations to secure military information or spread propaganda and discontent. It is obviously impracticable to appeal to Congress for further legislation in each new emergency. Swift Executive action is the only effective counterstroke.

The debates on the House and Senate floors similarly indicate that Congress, though well aware of the great breadth of the powers the proposed legislation lodged in the President, nevertheless deemed its passage vital to the nation's interests. Thus, Congressman Flood of the House Committee on

Foreign Affairs, which reported out the bill, in appealing to the House for swift passage of the bill, and particularly to those Representatives who had expressed fear that the powers conferred were too sweeping (see 56 Cong. Rec. 6030-6032, 6063-6064), repeated, practically *verbatim*, the last paragraph of the committee report as above quoted, and added (56 Cong. Rec. 6067): "This law is urgently needed and should be passed without delay and without opposition." [25]

The purpose of the amending Act of June 21, 1941, so far as is now relevant, was to make the 1918 Act effective "during the existence of the national emergency proclaimed by the President on May 27, 1941, or as to aliens whenever there exists a state of war between, or among, two or more states" as well as "when the United States is at war." See 87 Cong. Rec. 5050, 5052, 5386-5389; H. Rep. No. 754 and S. Rep. No. 444, both 77th Cong., 1st sess., accompanying H. R. 4973.

It is thus clear from the legislative history of the statute now challenged that Congress deemed it vital to the nation's security in time of war and national emergency to confer on the President the broad authority to prohibit departure from, or entry into, the United States by aliens "except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions

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[25] For the Senate debates on the 1918 bill, see 56 Cong. Rec. 6191-6195, 6246-6248.

as the President shall prescribe," and considered any attempt to meet the problem by detailed and piecemeal legislation quite "impracticable" (*supra*, p. 49) in view of the nature of the danger that was sought to be met. Since the Constitution demands neither "the impossible" nor "the impracticable" (cases cited *supra*, p. 47), we submit that the same considerations which convinced Congress that the legislation here involved was "essential" to national security in time of war and national emergency are equally sound as reasons for upholding its constitutionality as against the challenge that it unlawfully delegates legislative power to the executive.

3. *The delegation is valid even apart from the foreign affairs aspect of the legislation and its limitation to time of war or national emergency.*—While the relationship of the Act to foreign affairs and its limitation to time of war or national emergency would seem to place beyond question the constitutionality of its delegation of authority, there is no reason to suppose that the validity of that delegation depends solely upon these factors. Considered in its historical and administrative context, the standard established by Congress—that the President should "find that the interests of the United States require" additional restrictions and prohibitions upon the entry of aliens—seems to meet the requirements which the Constitution imposes upon legislation delegating administrative authority.

"It is not necessary that Congress supply administrative officials with a specific formula for their guidance in a field where flexibility and the adaptation of the congressional policy to infinitely variable conditions constitute the essence of the program. * * * Standards prescribed by Congress are to be read in the light of the conditions to which they are to be applied. 'They derive much meaningful content from the purpose of the Act, its factual background and the statutory context in which they appear.'" *Lichter* v. *United States*, 334 U. S. 742, 785. See also *Buttfield* v. *Stranahan*, 192 U. S. 470, 494-496; *Great Northern Ry. Co.* v. *United States*, 315 U. S. 262, 273; *American Power & Light Co.* v. *S. E. C.*, 329 U. S. 90, 104. In this case, the purpose of the Act, its factual background and the statutory context in which the standard appears all demonstrate clearly that the "interests of the United States" which the President is to consider do not comprehend all the interests of the United States—*e. g.*, the public health—but only those relating to its security. See pp. 47-50, *supra*. This conclusion is confirmed by examination of the Proclamation and the administrative regulations issued thereunder. The Proclamation declares that "the exigencies of the present international situation and of the national defense require" the additional restrictions and prohibitions (Appendix A, *infra*, at p. 59). The eleven categories of aliens which the regulations authorize to be excluded by the Attorney General (Appendix A, *infra*, at pp. 62-64)

are those whose entry would menace the security of the United States.

Viewed against this background, the standard that the restrictions and prohibitions be required by "the interests of the United States" seems no more indefinite than many other single standards which this Court has upheld, on reasoning similar to that outlined in the preceding paragraph. Thus, in *New York Central Securities Corp.* v. *United States*, 287 U. S. 12, 24-25, the Court held that the phrase "public interest", as used in the Transportation Act of 1920, was not, when the purposes of that Act and the context of the provision were taken into consideration, a "concept without ascertainable criteria." Compare also *National Broadcasting Co.* v. *United States*, 319 U. S. 190, 225-226 ("public interest, convenience or necessity"); *Avent* v. *United States*, 266 U. S. 127 ("public interest"); *Sunshine Coal Co.* v. *Adkins*, 310 U. S. 381, 398 ("just and reasonable" for rate making purposes); *Federal Power Commission* v. *Hope Gas Co.*, 320 U. S. 591, 600-601 (same). See *Lichter* v. *United States, supra*, 334 U. S. at 786.

III

Having Been Lawfully Excluded Pursuant to the Act of May 22, 1918, as Amended, and the Proclamation and Regulations Thereunder, Petitioner's Status as a "War Bride" Is Irrelevant

Petitioner's contention (Br. 21-24) that her status as a "war bride" somehow invests her with an absolute right to enter the United States, re-

gardless of her excludability under the Act of May 22, 1918, as amended, and the Presidential Proclamation and executive regulations issued pursuant thereto, is clearly without merit, being predicated on a number of misconceptions.

Even a casual reading of the so-called War Brides Act of December 28, 1945 (Appendix A, *infra*, at pp. 66-67), demonstrates that it was not the purpose of Congress to exempt the alien brides of honorably discharged citizen servicemen from every requirement of the immigration laws. The statute relieves such brides only from the physical, mental, documentary (§ 1), and quota (§ 2) requirements of the immigration laws, and insists that their entry into the United States be permitted only if they are "otherwise admissible under the immigration laws" (§ 1). If resort to the statute's legislative history were thought necessary to ascertain a legislative intent so clearly expressed by the language employed, that history would confirm that Congress desired merely to facilitate the admission of alien brides whom our soldiers had married while serving overseas during World War II and to exempt them from the specified requirements of the immigration laws; but there manifestly was no intent to lay down any general relaxation of the immigration laws for such persons. H. Rep. No. 1320 and S. Rep. No. 860 accompanying H. R. 4857, both 79th Cong.,

1st sess.; 91 Cong. Rec. 11738-11739, 12342.[26] An alien war bride who does not fulfill immigration requirements not specifically excepted in the statute cannot be permitted to enter the United States. *Bonham* v. *Bouiss*, 161 F. 2d 678 (C.A. 9).

Petitioner's argument (Br. 7-8) that the Act of May 22, 1918, as amended, is not an "immigration law" within the meaning of the war brides statute represents an attempt to exalt form at the expense of substance. Citation of authority hardly is necessary to illuminate the legislative design in referring to "immigration laws." What the war brides statute contemplated was the retention of restrictions and prohibitions, other than those specifically excepted, in all statutes relating to the entry of aliens into the United States. By its title,[27] its terms, and its objectives, the 1918 Act is clearly such a statute.

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[26] "Mr. LESINSKI. Mr. Speaker, the purpose of this bill is to cut the red tape surrounding the law as it is today and expedite the admission to the United States of thousands of alien brides who were married to our soldiers while the latter were serving abroad in the armed forces of the United States during the Second World War. * * * This bill provides that these alien relatives [spouses and minor children] shall not be excluded * * * if they are found to be afflicted with physical or mental defects which would serve to debar them from permanent admission to the United States under the mandatory provisions of the law. * * *

"Mr. MARTIN of Massachusetts. In other words, all this legislation does is to waive certain possible medical defects of wives of the GI's?

"Mr. LESINSKI. That is all it does. * * * " (91 Cong. Rec. 11738).

[27] "An Act to prevent in time of war departure from or entry into the United States contrary to the public safety" (40 Stat. 559).

Finally, petitioner argues (Br. 21-22) that under the terms of the War Brides Act the war must be regarded as having ended with the President's proclamation of the termination of hostilities on December 31, 1946 (see p. 30, *supra*), and that the provisions of the 1918 Act are consequently no longer applicable by virtue of Section 5 of the War Brides Act (*infra*, p. 67). This argument, however, is based upon a manifest misconstruction of the meaning and purpose of Section 5 of the latter Act. That section provides that "*For the purpose of this Act*, the Second World War shall be deemed to have commenced on December 7, 1941, and to have ceased upon the termination of hostilities as declared by the President or by a joint resolution of Congress" [italics added]. The evident purpose of this provision is to define the duration of "the Second World War" as that phrase is used in Section 1 of the Act which limits the benefits of the act to "alien spouses or alien children of United States citizens serving in, or having an honorable discharge certificate from the armed forces of the United States during the Second World War." Under no rational interpretation of Section 5 can the limitation set forth therein be considered as extinguishing war powers exercised under other statutes. Moreover, as observed by the court below (R. 66), the provisions of the 1918 Act, as amended, apply not only in wartime, but also for the duration of the state of

emergency proclaimed by the President on May 27, 1941, which still prevails.

It should be noted that if petitioner's contentions based on the War Brides Act were sound, there would have been nothing in our laws to prevent an alien spy or saboteur from marrying one of our fifteen million soldiers and veterans of World War II and then successfully demanding admission to the United States. This palpably erroneous conclusion would suffice in itself to demonstrate the lack of merit in the arguments based on this statute, even were its terms and meaning less clear.

CONCLUSION

The judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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NOVEMBER, 1949.

APPENDIX A

1. Section 1 of the Act of May 22, 1918, c. 81, 40 Stat. 559, as amended by the Act of June 21, 1941, c. 210, § 1, 55 Stat. 252 (22 U.S.C. 223), provides in pertinent part:

> When the United States is at war or during the existence of the national emergency proclaimed by the President on May 27, 1941, or as to aliens whenever there exists a state of war between, or among, two or more states, and the President shall find that the interests of the United States require that restrictions and prohibitions in addition to those provided otherwise than by this Act be imposed upon the departure of persons from and their entry into the United States, and shall make public proclamation thereof, it shall, until otherwise ordered by the President or Congress, be unlawful—
>
> (a) For any alien to depart from or enter or attempt to depart from or enter the United States except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President shall prescribe;
>
> * * * * *

2. Pursuant to the authority conferred on him by the above statute, the President, on November 14, 1941, issued Proclamation No. 2523 (6 F.R. 5821-5823), which provided in pertinent part at the time of petitioner's exclusion:[28]

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[28] This Proclamation was amended on August 17, 1949, while the instant case was pending before this Court on writ of certiorari, by Proclamation No. 2850 (14 F.R. 5173), for the terms of which see footnote 29, *infra*, pp. 60-61.

WHEREAS the act of Congress approved on May 22, 1918 (40 Stat. 559), as amended by the act of Congress approved on June 21, 1941 (* * * 55 Stat. 252) vests authority in me to impose restrictions and prohibitions in addition to those otherwise provided by law upon the departure of persons from and their entry into the United States when the United States is at war, or during the existence of the national emergency proclaimed by the President on May 27, 1941 [citing 6 F. R. 2617], or, as to aliens, whenever there exists a state of war between or among two or more states, and when I find that the interests of the United States so require; and

WHEREAS the national emergency proclaimed by me on May 27, 1941, is still existing; and

WHEREAS there unhappily exists a state of war between or among two or more states * * *; and

WHEREAS the exigencies of the present international situation and of the national defense require that restrictions and prohibitions, in addition to those otherwise provided by law, be imposed upon the departure of persons from and their entry into the United States * * *:

NOW, THEREFORE, I, FRANKLIN D. ROOSEVELT, President of the United States of America, * * * do hereby find and publicly proclaim and declare that the interests of the United States require that restrictions and prohibitions, in addition to those otherwise provided by law, shall be imposed upon the

departure of persons from and their entry into the United States * * *; and I make the following rules, regulations, and orders which shall remain in force and effect until otherwise ordered by me:

* * * * *

(3) After the effective date of the rules and regulations hereinafter authorized, no alien shall enter or attempt to enter the United States unless he is in possession of a valid unexpired permit to enter issued by the Secretary of State, or by an appropriate officer designated by the Secretary of State, or is exempted from obtaining a permit to enter in accordance with the rules and regulations which the Secretary of State, with the concurrence of the Attorney General, is hereby authorized to prescribe in execution of these rules, regulations, and orders.

No alien shall be permitted to enter the United States if it appears to the satisfaction of the Secretary of State that such entry would be prejudicial to the interests of the United States as provided in the rules and regulations hereinbefore authorized to be prescribed by the Secretary of State, with the concurrence of the Attorney General.[29]

* * * * *

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[29] By Presidential Proclamation No. 2850 of August 17, 1949 (14 F. R. 5173), issued while the instant case was pending before this Court on writ of certiorari, the two subparagraphs under paragraph (3), above, were amended in the following respects:

The first subparagraph was repeated without substantive

3. Pursuant to the authority conferred by the above Presidential Proclamation, the Secretary of State, with the concurrence of the Attorney General, issued regulations (6 F.R. 5911-5918) which were from time to time amended and revised (10 F.R. 5889-5893; 10 F.R. 8995-8996, 8997-9002; 10 10 F.R. 15332, 15333-15335) and eventually codified, on July 30, 1947, as Part 175 of Title 8 of the Code of Federal Regulations (12 F.R. 5065, 5135-5142). These regulations provide in pertinent part (8 C.F.R. [1947 Supp.], Part 175; 8 C.F.R. [1949 ed.], Part 175):

PART 175—CONTROL OF PERSONS ENTERING AND LEAVING THE UNITED STATES PURSUANT TO THE ACT OF MAY 22, 1918, AS AMENDED

* * * * *

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change and was designated subparagraph (a) under paragraph (3).

The second subparagraph, redesignated as subparagraph (b), was amended to read: "No permit to enter shall be issued to an alien if it appears to the satisfaction of the issuing officer, or the Secretary of State, that the alien's entry would be prejudicial to the interests of the United States within the meaning of the rules and regulations hereinbefore authorized to be prescribed by the Secretary of State with the concurrence of the Attorney General."

A third subparagraph, (c), was added. It provides: "Notwithstanding the provisions of the foregoing paragraphs (a) and (b), no alien applying for admission, even with a valid permit to enter, shall enter or be permitted to enter the United States if it appears to the satisfaction of the Attorney General that such entry would be prejudicial to the interests of the United States."

In addition to amending paragraph (3) of Proclamation No. 2523 in the particulars mentioned, Proclamation No. 2850 further provided that "All existing regulations promulgated under or pursuant to the said Proclamation No. 2523 are hereby ratified and confirmed and shall be construed to have the same effect as if included in such proclamation: *Provided, however*, that nothing contained herein shall be deemed to limit lawful authority to amend or modify such regulations."

* * * * *

§ 175.52 *Refusal of permission to enter.* (a) No permit to enter shall be issued to any alien if the permit-issuing authority has reason to believe that the entry of the alien would be prejudicial to the interests of the United States.

* * * * *

§ 175.53 *Classes of aliens whose entry is deemed to be prejudicial to the public interest.* The entry of an alien who is within one of the following categories shall be deemed to be prejudicial to the interests of the United States for the purposes of §§ 175.41 to 175.63, inclusive:

(a) Any alien who belongs to one of the classes specified in the act of October 16, 1918, as amended [anarchists, opposers of organized government, advocates of violent overthrow of the United States Government, etc.]. (* * * 8 U.S.C. 137).

(b) Any alien who is a member of, affiliated with, or may be active in the United States in connection with or on behalf of, a political organization associated with or carrying out policies of any foreign government opposed to the measures adopted by the Government of the United States in the public interest, or in the interest of national defense, or in the interest of the common defense of the countries of the Western Hemisphere, or in the prosecution of the war.

(c) Any alien in possession of, or seeking to procure, unauthorized secret information concerning the plans, preparations, equipment, or establishments for the national defense of, or the prosecution of the war by, the United States.

(d) Any alien engaged in activities designed to obstruct * * * the effectiveness of the measures adopted by the Government of the United States for the defense of the United States or for the defense of any other country, or the prosecution of the war.

(e) Any alien engaged in activities designed to obstruct * * * the effectiveness of any plans made or steps taken by any country of the Western Hemisphere in the interest of the common defense of the countries of such Hemisphere.

(f) Any alien engaged in organizing, teaching, advocating, or directing any rebellion, insurrection, or violent uprising against the United States.

(g) Any alien engaged in a plot or plan to destroy materials, or sources thereof, vital to the defense of, or the prosecution of the war by, the United States, or to the effectiveness of the measures adopted by the United States for the defense of any other country.

(h) Any alien whose admission would endanger the public safety, as provided in any Executive order issued in pursuance of the act of Congress approved June 20, 1941 (* * * 55 Stat. 252 * * *).

(i) Any alien enemy [with specified exceptions].

(j) Any alien found to be, or charged with being, a war criminal * * * or an[y] alien who has been guilty of * * * conduct contrary to civilization and human decency on behalf of the Axis countries during the present World War.

(k) Any alien who is not within one or more of the classes defined in paragraphs (a) to (j), inclusive, but in whose case circumstances of a similar character may be found to exist, which render the alien's admission prejudicial to the interests of the United States, which it was the purpose of the act of June 21, 1941 (55 Stat. 252 * * *) to safeguard.

* * * * *

§ 175.57 *Entry not permitted in special cases.* (a) Any alien, even though in possession of a permit to enter, or exempted under §§ 175.41 to 175.63, inclusive, from obtaining a permit to enter, may be excluded temporarily if at the time he applies for admission at a port of entry it appears that he is or may be excludable under one of the categories set forth in § 175.53. The official excluding the alien shall immediately report the facts to the head of his department, who will communicate such report to the Secretary of State. Any alien so temporarily excluded by an official of the Department of Justice shall not be admitted and shall be excluded and deported unless the Attorney General, after consultation with the

Secretary of State, is satisfied that the admission of the alien would not be prejudicial to the interests of the United States. Any alien so temporarily excluded by any other official shall not be admitted and shall be excluded and deported unless the Secretary of State is satisfied that the admission of the alien would not be prejudicial to the interests of the United States.

(b) In the case of an alien temporarily excluded by an official of the Department of Justice on the ground that he is, or may be excludable under one or more of the categories set forth in § 175.53, no hearing by a board of special inquiry [30] shall be held until after

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[30] Boards of special inquiry are provided for by Sections 16 and 17 of the Immigration Act of February 5, 1917, c. 29, 39 Stat. 885-887, as amended, which provide in pertinent part:

"Sec. 16 [8 U.S.C. 152]. * * * Every alien who may not appear to the examining immigrant inspector at the port of arrival to be clearly and beyond a doubt entitled to land shall be detained for examination in relation thereto by a board of special inquiry. In the event of rejection by the board of special inquiry, in all cases where an appeal to the Attorney General is permitted by this Act, the alien shall be so informed and shall have the right to be represented by counsel or other adviser on such appeal. * * *

"Sec. 17 [8 U.S.C. 153]. Boards of special inquiry shall be appointed by either the district director of immigration and naturalization designated by the Commissioner or by the inspector in charge at the various ports of arrival as may be necessary for the prompt determination of all cases of immigrants detained at such ports under the provisions of the law. Each board shall consist of three members, who shall be selected from such of the immigrant officials in the service as the Commissioner of Immigration and Naturalization, with the approval of the Attorney General, shall from time to time designate as qualified to serve on such boards. * * * Such boards shall have authority to determine whether an alien who has been duly held shall be allowed to land or shall be deported. All hearings before such boards shall be

the case is reported to the Attorney General and such a hearing is directed by the Attorney General or his representative. In any special case the alien may be denied a hearing before a board of special inquiry and an appeal from the decision of that board if the Attorney General determines that he is excludable under one of the categories set forth in § 175.51 on the basis of information of a confidential nature, the disclosure of which would be prejudicial to the public interest.

* * * * * *

4. The so-called War Brides Act of December 28, 1945, c. 591, 59 Stat. 659, provides in pertinent part:

> [Sec. 1 (8 U.S.C. 232)]. Notwithstanding any of the several clauses of section 3 of the Act of February 5, 1917 [8 U.S.C. 136], excluding physically and mentally defective aliens, and notwithstanding the documentary requirements of any of the immigration laws or regulations, Executive orders, or Presidential proclamations issued thereunder, alien spouses or alien children of United States

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separate and apart from the public, but the immigrant may have one friend or relative present under such regulations as may be prescribed by the Attorney General. Such boards shall keep a complete permanent record of their proceedings and of all such testimony as may be produced before them; and the decisions of any two members of the board shall prevail, but either the alien or any dissenting member of the said board may appeal * * * to the Attorney General * * *. In every case where an alien is excluded from admission into the United States, under any law or treaty now existing or hereafter made, the decision of a board of special inquiry adverse to the admission of such alien shall be final, unless reversed on appeal to the Attorney General. * * *"

citizens serving in, or having an honorable discharge certificate from the armed forces of the United States during the Second World War shall, if otherwise admissible under the immigration laws and if application for admission is made within three years of the effective date of this Act, be admitted to the United States: * * *

Sec. 2 [8 U.S.C. 233]. Regardless of section 9 of the Immigration Act of 1924, any alien admitted under section 1 of this Act shall be deemed to be a nonquota immigrant as defined in section 4(a) of the Immigration Act of 1924.

* * * * *

Sec. 5 [8 U.S.C. 236]. For the purpose of this Act, the Second World War shall be deemed to have commenced on December 7, 1941, and to have ceased upon the termination of hostilities as declared by the President or by a joint resolution of Congress.

APPENDIX B

INS: Oct. 19, 1949.
EJH:RAV/mb
File: A-6937471
In re: ELLEN KNAUFF.

Before the Attorney General in Exclusion Proceedings under 8 C.F.R. 175.57

Upon consideration of the report submitted in accordance with 8 C.F.R. 175.57(a), it is determined on the basis of confidential information, the disclosure of which would be prejudicial to the public interest, that the alien is excludable as one whose entry is deemed prejudicial to the public interest.

Accordingly, under the authority of 8 C.F.R. 175.57(b) it is ordered that the subject alien be denied a hearing before a Board of Special Inquiry and her temporary exclusion be made permanent.

J. HOWARD MCGRATH,
Attorney General.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

No. 54

UNITED STATES OF AMERICA *ex rel.* ELLEN KNAUFF,

Appellant,

vs.

EDWARD J. SHAUGHNESSY, Acting District Director of Immigration and Naturalization Service,

Appellee.

BRIEF OF AMERICAN CIVIL LIBERTIES UNION, AS *AMICUS CURIAE*

AMERICAN CIVIL LIBERTIES UNION,
Amicus Curiae.

JACK WASSERMAN,
WILLIAM B. GUROCK,
of Counsel.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

No. 54

UNITED STATES OF AMERICA, *ex rel.* ELLEN KNAUFF,
Appellant,

vs.

EDWARD J. SHAUGHNESSY, Acting District Director of Immigration and Naturalization Service,
Appellee.

BRIEF OF AMERICAN CIVIL LIBERTIES UNION, AS *AMICUS CURIAE*

Interest of American Civil Liberties Union

This brief *amicus curiae* is submitted with consent of the parties hereto. One of the prime objectives of the American Civil Liberties Union is that no person shall be deprived of life, liberty, or property without due process of law. It believes that the case at bar involves a highly significant instance of deprivation of liberty without due process of law.

Statement

The appellant applied on August 14, 1948, at the Port of New York for admission to the United States under the special benefits of the War Brides Act (Ch. 591,

Public Law 271 of 1945). She was taken that day to Ellis Island where she was temporarily excluded from the United States. Thereafter, on October 6, 1948, the Attorney General ordered the appellant finally excluded from the United States. At no time was the appellant granted a hearing before a Board of Special Inquiry, nor was she ever advised of the reasons for such exclusion.

ARGUMENT

I

The denial of an administrative hearing was in violation of law and of the Constitution.

Under the due process clause of the Fifth Amendment and as a matter of statutory construction, appellant is entitled to a hearing to determine her admissibility to the United States.

Aliens arriving in the United States have been granted hearings to determine their admissibility for at least the last fifty years. The basic immigration statute of February 5, 1917, provides for a hearing before a Board of Special Inquiry (8 U.S.C. 152). Hearings are similarly granted under the Anarchist Act of 1918 (8 U.S.C. 137), the Quota Act of 1924 (8 U.S.C. 201), the Alien Registration Act of 1940 (8 U.S.C. 451) and the act excluding aliens believed by the Attorney General to be entering to engage in activities endangering the public safety (Public Law 552 of 1948).

These hearings are not merely the result of legislative decree but are required by the Constitution. This principle was clearly established in cases arising prior and subsequent to the enactment of statutes providing for

hearings. The *Japanese Immigrant* case, 189 U. S. 86 (*Kaoru Yamataya* v. *Fisher*), 47 Law Ed. 721, 1903, established the principle that an alien under deportation proceedings was entitled to a fair administrative hearing. The Court in this case states:

> "But this Court has never held, nor must be now understood as holding, that administrative officers, when executing the provisions of a statute involving the liberty of persons may disregard the fundamental principles that inhere in 'due process of law' as understood at the time of the adoption of the Constitution. One of these principles is that no person shall be deprived of his liberty without opportunity, at some time, to be heard, before such officers, in respect of the matters upon which that liberty depends."

In *Chin Yow* v. *United States*, 208 U. S. 8 (1908), this doctrine was extended to persons excluded from admission to the United States. While in the *Chin Yow* case the issue was one of citizenship, yet the report entitled "The Secretary of Labor's Committee on Administrative Procedure, The Immiigration and Naturalization Service" by Marshall E. Dimock, Henry M. Hart and John McIntire (1940) notes that the *Chin Yow* case is not confined to citizenship claims but also to any applicant for admission to the United States. See also *Lloyd Sabaudo Societa* v. *Elting*, 287 U. S. 329, 335-336 (1932). Since the time of the *Lloyd Sabaudo* case the courts have consistently taken the view that an alien applying for admission to the United States is entitled to a fair administrative hearing. In *United States ex rel. Brandt* v. *District Director of Immigration*, 40 Fed. Supp. 371 (D.C.N.Y. 1941) an alien arriving entirely without documents was said to be con-

stitutionally entitled to a hearing on the question of whether he came within a category of emergency cases which the Secretary of State was authorized to define. Similarly, in *Johnson* v. *Tertzag*, 2 F. (2d) 40 (D. C. Mass., 1924), the court left no doubt as to its view of the administrative power exercised in exclusion cases. With respect to this power the court, quoting from *Ewock Jan Fat* v. *White*, 253 U. S. 454 at 464, stated:

> "It is a power to be administered, not arbitrarily or secretly, but fairly and openly under the restraints and principles of free government applicable where the fundamental rights of men are involved, regardless of their origins or race. It is the province of the courts, in proceedings for review * * * to prevent abuse of this extraordinary power, and this is possible only when a full record is preserved of the essentials on which the executive officers proceed to judgment."

In *Ex parte Petkos*, 212 Fed. 275, 278 (D. C. Mass. 1913, reversed on other grounds, 214 Fed. 978) the Court, after indicating its views as to the constitutional requirement for a fair hearing, held that there had not been such a hearing because he had never been apprised of the evidence upon which he was to be deported and had no opportunity to meet it. Compare *United States ex rel. Reimann* v. *Martin*, 193 Fed. 795; *Gung You* v. *Nagle*, 34 F. (2d) 848; *Tod* v. *Waldman*, 266 U. S. 113; *O'Connell ex rel. Foo* v. *Ward*, 126 F. (2d) 615.

The Immigration and Naturalization Service publication, *Monthly Review*, in an article in the January 1945 issue by Commissioner Ugo Carusi, states at page 101 that: "An alien seeking to enter the United States is entitled to a fair hearing. * * *" See also Note, 13 Columbia Law Review 1013.

The Passport Act of May 22, 1918 (40 Stat. 559) until November 14, 1941 was consistently interpreted administratively as authorizing the imposition of additional documentary conditions upon the entry of aliens, but such aliens were always accorded hearings as a matter or right under the Immigration Act of February 5, 1917 (8 U.S.C. 152).

The amendment of June 21, 1941 (55 Stat. 252) of the Passport Act of 1918, authorized the President to impose additional conditions on the entry and departure of aliens whenever there was a state of war between two foreign states, a national emergency, or during wartime (22 U.S.C. 223-226).

Pursuant to this amendment Presidential Proclamation No. 2523, issued November 14, 1941, based on the existence of a national emergency and a state of war between two foreign states, authorized denial of entry to aliens where it appeared to the satisfaction of the Secretary of State that such entry would be prejudicial to the interests of the United States, as provided in rules and regulations authorized to be prescribed by the Secretary of State with the concurrence of the Attorney General. By 8 C.F.R. 175.53 the classes of aliens whose entry was deemed prejudicial was defined. Section 175.57 of these regulations authorizes the temporary exclusion of aliens by the Department of Justice and provides that an alien "shall not be admitted and shall be excluded and deported unless the Attorney General, after consultation with the Secretary of State, is satisfied that the admission of the alien would not be prejudicial to the interests of the United States. Any alien so temporarily excluded by any other officials shall not be admitted and shall be excluded and deported unless the Secretary of State is satisfied that

the admission of the alien would not be prejudicial to the interests of the United States."

However, paragraph (b) of this section of the regulations provides that no hearing by a Board of Special Inquiry shall be held until after the case is reported to the Attorney General and such a hearing is directed by the Attorney General or his representative. It is further provided that in any special case a hearing may be denied where the Attorney General determines that it is on the basis of "information of a confidential nature, the disclosure of which would be prejudicial to the public interest".

The 1941 amendment to the Passport Act made no material change. It authorized the President upon a proclamation finding that it was necessary to impose restrictions and prohibitions in *addition* to those otherwise provided to make it unlawful for an alien to enter "except under such reasonable rules, regulations, and orders and subject to such limitations and exceptions as the President shall prescribe."

Presidential Proclamation No. 2523 was issued on the basis of the National Emergency proclaimed on May 27, 1941. It requires aliens to present passports and excludes aliens whose entry the Secretary of State finds prejudicial.

It will be observed that no provision is made in the statute or the proclamation for the suspension of hearings heretofore granted for over twenty years under the statute to arriving aliens. In the light of the history of the statute, and the administrative practice thereunder, *in the absence of explicit language, there should be a strong presumption that Congress did not intend to authorize the denial of a hearing to an arriving alien. Congress did not explicitly authorize the President to deny a hearing*

nor did the Presidential Proclamation contain any such explicit authorization.

The authorization to deny a hearing is contained in 8 C.F.R. 175.57b. It is submitted that the regulations exceed the authority delegated by the statute and the proclamation.

Instead of imposing *additional* conditions on entering aliens, the regulations do two things: First, they exclude those already excludable under existing law as in the case of Communists and those who would endanger public safety; secondly, they eliminate hearings under 8 C.F.R. 175.57. If the statute and proclamation authorize the suspension of hearings, then the Secretary of State is authorized to nullify or abrogate all our immigration laws. Nowhere is there any intimation that Congress intended to grant such untrammelled authority. Exclusion hearings are granted when a subversive is denied entry under the Act of October 16, 1918 (8 U.S.C. 137). But where he is suspected of subversion and denied entry under the regulation which incorporates the same statute (8 C.F.R. 175.53) he may be denied a hearing under 8 C.F.R. 175.57(b) on the ground that *ex parte* information against him is confidential.

As recently as April 12, 1948, the United States Court of Appeals for the District of Columbia in the case of *Wilson v. Federal Communications Commission*, 170 F. 2(d) 793, 802, cited the *Japanese Immigration* case, *supra*, as authority for determining that a hearing was constitutionally required under a section of the Federal Communications Act which did not specifically provide for a hearing.

It is submitted that the regulations eliminating hearings in the light of a long history affording hearings should not be tolerated in the absence of express statutory authority. (The *Japanese Immigrant* case, *supra; Wilson*

v. *Federal Communications Commission, supra.*) It is apparent from these cases and numerous others to the same effect that the construction placed upon the statute and the proclamation is one which the courts hold improper on the ground that if so construed the statute would be unconstitutional.

It is a fact that the emergency proclaimed by President Roosevelt on May 27, 1941 is not in existence today nor are two states at war with each other as was true on November 14, 1941. We therefore question whether the Proclamation of November 14, 1941 is still in force. In any event the emergency upon which it was based can confer no power to perform acts otherwise unconstitutional. See *Home Bldg. & Loan Asso.* v. *Blaisdell*, 290 U. S. 398, 426. Denial of hearings is not in conformity with the statute and proclamation and is unconstitutional as shown above. The "emergency" cannot authorize such denial. The war power might permit such denial if properly invoked. But war between nations other than the United States does not give basis for invocation of that power. The substantially unlimited scope given to governmental authorities under the war power is itself the strongest possible reason for exercising extreme caution in finding that that power has been invoked. Thus the doctrine of *Korematsu* v. *United States*, 323 U. S. 214, and *Hirabayashi* v. *United States*, 335 U. S. 160, that American citizens may be subjected to unequal treatment affecting their liberties upon the basis of race or ancestry (see: Dembitz, *Racial Discrimination and the Military Judgment*, 40 Columbia L. Rev. 175) is in itself sufficiently shocking so that the power permitting such action must obviously be limited to cases in which it is explicitly invoked and warranted by statute and proclamation. Such is not the case here.

II

The statute herein is void for undue delegation of legislative power to the executive and for vagueness.

The statute authorizes the President to prescribe additional conditions on the entry and departure of aliens (22 U.S.C. 223-226). It does not define a class of inadmissible aliens. By proclamation the President banned the entry of aliens where it appeared to the Secretary of State that such entry would be "prejudicial to the interests of the United States". The Proclamation itself does not define or delimit the category of aliens whose entry would be prejudicial.

A similar statute was suggested in the 75th Congress in 1937. S. 1363 was a bill introduced by Senator Reynolds to deny visas to any alien whose presence in the United States was deemed inimical to the public interest, and to refer such cases to the President. Gerard Reilly, Acting Solicitor of Labor, opposed the bill with this comment:

> "Because of its vagueness as to the group of aliens sought to be denied visas, it would be difficult for the Secretary of State to determine which classes should be brought to the attention of the President. If the Congress intends to exclude additional classes from admission to the United States, those classes should be set forth in the law with definiteness."

A similar comment was made with reference to S. 1366 in the 75th Congress, 1st Session, by Frances Perkins, Secretary of Labor. See *Hearing before Senate Subcommittee on Deportation of Aliens*, April, 1937, at page 13. In the 76th Congress, 1st Session, S. 411 was introduced by Senator Reynolds. This is a bill to provide for the

deportation of aliens inimical to the public interest. Frances Perkins, Secretary of Labor, and Edward Shaughnessy, Deputy Commissioner of Immigration, both opposed this bill on the ground that its provisions were so vague as to make responsible administration of it impracticable. The Secretary of Labor stated:

> "Existing provisions of law have brought about the deportation each year of an average of 3,500 criminals, narcotic violators, immoral persons, mentally or physically defective aliens, anarchists, and kindred classes, whose presence in the United States is considered as not being in the best interests of the country. I suppose that this bill by referring to aliens 'inimical to the public interest' refers to aliens not within that group. I also presume that the Secretary of Labor, on whose warrant such aliens are to be deported, must determine in what cases an alien's presence is to be regarded as inimical to the public interest. The bill fails to define the terms 'inimical' or 'public interest' so that it is altogether indefinite as to what is to be regarded as the public interest or under what circumstances an alien's presence is to be regarded as inimical thereto. On the whole, I think the provision is so vague as to make responsible administration of it impracticable."
>
> See *Hearings on Deportation of Aliens*, 76th Congress, 1st Session (March, 1939), at pages 12 and 26.

The instant statute falls within the proscription set forth in the above communication on S. 1363, S. 1366 and S. 411 as well as within the proscription of *Schecter Poultry Corp.* v. *U. S.*, 295 U/S. 495 at 529, and *Panama Refining Co.* v. *Ryan*, 293 U. S. 388. In the *Schecter* case, *supra*, it was stated:

> "Instead of prescribing rules of conduct, it (the statute) authorizes the making of codes to prescribe them. For that legislative undertaking section 3 sets up no standards. * * * We think that the code-making authority thus conferred is an unconstitutional delegation of legislative power."

The instant statute merely authorized the imposition of additional conditions upon entry. No standards were set, nor were the functions of the President delineated in any way. If S. 1363, S. 1366 and S. 411 were vague, and responsible administration of the same impracticable, the Act of June 21, 1941, attacked herein, presents an *a fortiori* case. In the instant case, one has to look beyond the statute to the Presidential Proclamation to find any standards whatever and even the standard there found conveys no suggestion as to the limits or the manner of its exercise. It therefore seems clear that the instant statute falls within the unconstitutional proscription noted above.

CONCLUSION

It is respectfully submitted that a denial of a hearing deprives the appellant of due process of law and the decision of the Court of Appeals for the Second Circuit should be reversed and the appellee directed to grant appellant a hearing before a Board of Special Inquiry.

Respectfully submitted,

AMERICAN CIVIL LIBERTIES UNION,
Amicus Curiae.

JACK WASSERMAN,
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of Counsel.